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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Dated:

February 16, 1966

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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v.

UNITED STATES OF AMERICA, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the erroneous decision and judgment of the United States Court of Appeals for the District of Columbia Circuit entered on January 17, 1966.

CITATIONS TO OPINIONS BELOW

The Memorandum and Order of the District Court denying a continuance [R. 103] is printed in Appendix A, infra, p. 6a.

The Judgments of the United States District Court for the District of Columbia were entered on June

22, 1964 [R. 156, 157] and are printed in Appendix A, infra, pp. 4a to 5a.

A District Court opinion in this case on a point on which no review is sought in this Court, is reported at 216 F.Supp. 645 U.S.D.C. W.D. Mo. (1963), but is not reprinted in the Appendix *infra*.

The Opinion of the Court of Appeals is printed in Appendix A hereto, *infra*, p. 6a *et seq.* The dissenting Opinion of Senior Circuit Judge Wilbur K. Miller is reported at Appendix A, *infra*, beginning at p. 24a. These opinions have not yet been reported.

JURISDICTION

The Circuit Court of Appeals decided the consolidated appeals on November 10, 1965. A motion to extend the time within which to file a petition for rehearing was timely filed, granted and a petition for rehearing and rehearing en banc was filed within the time as extended by the Court of Appeals. The petition for rehearing or rehearing en banc was denied by the Court of Appeals on January 17, 1966. Jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254(1).

QUESTIONS PRESENTED

1. Whether petitioner was deprived of his Constitutional right to a fair and impartial trial because of the failure of the District Court to grant motions for continuance or transfer in view of widespread prejudicial and adverse publicity in connection with the simultaneous Congressional investigation in the "Bobby Baker" case, in which investigation and publicity petitioner was prominently involved.

2. Whether petitioner was denied his Constitutional right to a fair and impartial trial because of the failure of the District Court to grant a mistrial on the grounds of prejudicial publicity and misconduct of the prosecutor during the trial.

3. Whether petitioner was denied his Constitutional right to a fair and impartial trial because of the District Court's refusal to interrogate the jurors as to whether any of the jurors had been influenced by the prejudicial publicity during trial concerning extrinsic matters and alleged "influence peddling".

4. Whether evidence to the effect that petitioner's certified public accountant and attorney had not reported as income, in returns prepared by the accountant and attorney, amounts disbursed by petitioner on behalf of others, without more, was sufficient proof of that specific criminal and evil intent to evade taxes required for conviction under 26 U.S.C., Sec. 7201.

5. Whether petitioner's complete reliance upon his certified public accountant and attorney for preparation of the tax returns in issue is sufficient to negate any intent to defraud, where the accountant and attorney were given all information required to prepare correct returns, and were instructed by petitioner to prepare correct returns and to clear the returns with the Internal Revenue Service.*

6. Whether petitioner's Constitutional right to a fair trial was violated by the District Court's erroneous admission in evidence of a brief prepared by a former attorney for petitioner and submitted to the Internal Revenue Service during administrative settlement discussions, which brief contained prejudicial, erroneous and immaterial statements, neither

* Hereinafter referred to as IRS.

made, nor ratified by petitioner, including statements referring to other taxable years not involved in the trial.

7. Whether petitioner's Constitutional right to a fair trial was violated, where his attorneys and accountant were compelled to cooperate with the investigating agent and to testify against petitioner upon threat of prosecution.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Fifth Amendment of the Constitution of the United States provides:

AMENDMENT V

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment of the Constitution of the United States provides:

AMENDMENT VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where-

in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Title 26, U.S.C., Section 7201 provides:

§ 7201. Attempt to evade or defeat tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

STATEMENT OF THE CASE

Petitioner Fred B. Black, Jr., was convicted under two indictments charging him with violations of Sec. 7201 of the Internal Revenue Code of 1954, 26 U.S.C. 7201, *supra*. One indictment related to the taxable year 1956; the other to 1957, 1958 and 1959. The 1959 count was dismissed by respondent at the outset of the trial. Petitioner was found guilty as to the remaining three years.

An appeal to the United States Court of Appeals for the District of Columbia Circuit resulted in affirmance of the conviction by a divided Court, with Senior Circuit Judge Wilbur K. Miller vigorously dissenting.

The facts underlying, as well as the circumstances surrounding the indictment, trial and conviction, as

recited both in the majority and the dissenting opinion of the Appellate Court, distinguish this case from the run-of-the-mill tax evasion case. This case involves a miscarriage of justice, violative of the tax evasion statute and of the Fifth and Sixth Amendments. Certiorari should be granted in the interest of the protection of individual Constitutional rights, and of clarification and enforcement of the pertaining law. Briefly summarized, these facts and circumstances are as follows:

(a) The Background

Petitioner Fred B. Black, Jr. was convicted of not reporting as taxable income approximately $91,000.00 which passed through his hands and was disbursed by him on behalf of five manufacturing and construction firms during the taxable years in issue.

Born in 1914, petitioner is a high school graduate without college or business education, or any experience, actual or theoretical, in accounting, law or taxation or in the preparation of income tax returns. (Tr. 2302, et seq.)[1]

In the fall of 1955, after some years of employment in Washington, petitioner decided to go into the public relations and consulting business, with headquarters in his home area, Joplin, Missouri (Tr. 2300)[2], together with a long-time friend, Ralph Baird,

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[1] Petitioner never, to the day of trial, prepared a tax return (Tr. 2303).

[2] References as follows: App. A, *infra*, p. 13a.
J.A. Joint Appendix on Appeal
Tr. Trial Transcript (part of certified Record)
Op. Opinion of Court of Appeals for the District of Columbia, infra, App. A, pp. 6a *et. seq.*

an attorney of excellent reputation, practicing in Joplin (Tr. 2301). Petitioner was to do the traveling and selling; Baird was to take care of all office work, books, and handle all accounting features, including all income tax returns; in short, all "inside" work. (Tr. 2301, 2302).

Beginning in 1955, i.e., just prior to the first tax year in issue, petitioner was given a room in Baird's suite. All of petitioner's records were to be located there, to be handled by Baird and such persons as Baird might employ. Baird suggested setting up a corporation and, in 1955, Baird organized Blyco, in which Baird had a one-third interest (Tr. 1554-5; Gov't Exh. 50). The business done by the corporation was essentially identical with that of petitioner and both overlapped (Op., p. 9; App. A, p. 13a *infra*) (Tr. 1666).

(b) Petitioner's attorney and accountant prepared the tax returns.

Petitioner at no time took part in bookkeeping or office work. He did not participate in the preparation of the returns in issue (Tr. 925, 1067-8) (Diss. Op., p. 21, App. A, p. 26a, *infra*), but signed them without inquiry or discussion—exactly as prepared by respondent's witness Muskrat, the certified public accountant employed by Baird. Baird was "overseeing all of Muskrat's performance" (Op., p. 17, App. A, p. 21a *infra*). When Muskrat did not know how to handle a particular item he would consult with Baird (not petitioner). The returns were submitted to petitioner for signature on one of his brief stops in the Baird office, or sent by mail to Washington. Both Black, individually, and Blyco, the corporation, re-

ported and paid tax on substantial income during the taxable years at issue. Both Baird, the attorney, and Muskrat, the accountant, testified for respondent under coercion (Diss. Op., pp. 21, 22), Baird admittedly having been threatened with indictment by respondent's agents. (App. A, p. 25a).

(c) Baird and Muskrat had all necessary information to prepare correct returns.

Baird, respondent's main witness, drafted the employment contracts for petitioner (Op., p. 13, App. A, p. 17a *infra*) and knew of all compensation arrangements (Op., p. 16, App. A, p. 20a *infra*). Petitioner's files, records and bank statements were available to both Baird and Muskrat (Op., p. 13, App. A, p. 17a, *infra*). Evidence of all unreported items was available to Baird and Muskrat in Joplin (Op., pp. 13, 14; Footnotes 4, 5). (App. A, pp. 17a-18a).

The decision not to report as income certain monies that passed through petitioner's hands was Baird's, not petitioner's. (Footnote 9, Op., p. 19, App. A, p. 22a, *infra*).

These monies were openly paid by check and, at least for two of the taxable years, were reflected as received, on books kept by Muskrat (Tr. 1270, et seq.). Petitioner had no knowledge of which items were entered by Muskrat on the books, which items were reported as taxable income, and which items were not so reported. (Tr. 1276). Respondent's evidence also showed that petitioner had instructed Muskrat and Baird to prepare correct returns and to visit the Kansas City Internal Revenue Office to make sure that all returns were made out correctly (Diss. Op., p. 23, App. A, *infra,* p. 26a).

(d) The unreported monies were not converted to petitioner's own use.

All the monies that were not reported as income by petitioner were paid and reported by the payors as their expenses and not as compensation to petitioner (Tr. 448; 602; 661; 1754-56) (Op., pp. 9-10, App. A, pp. 13a-14a, *infra*). No W-2 or 1099 forms of I.R.S. were furnished petitioner or the I.R.S. by the payors.

None of these funds, disbursed for and on behalf of the payors, were retained by petitioner or converted to his own use. Even the majority so found (Op., pp. 20-21; App. A, *infra,* p. 24a). As the Trial Court (Tr. 2162-2164), so did the Appellate Court convict petitioner—not for evasion of taxes on income—but for not "identifying" the recipients of the disbursements made by petitioner on behalf of his clients with his clients' money.

(e) Prejudicial publicity before and during Trial.

With attention focused on petitioner by his being a co-defendant with former Secretary of the Majority Robert (Bobby) Baker in a civil suit and the simultaneous Senate investigation involving petitioner as a "Baker associate", the District Court failed to protect petitioner's Constitutional rights both by its refusal to grant a reasonable continuance, and by its refusal to grant a mistrial when the prosecutor in effect called petitioner an "influence peddler" in his opening statement and the press in the middle of the trial, announced in banner headlines:

WASHINGTON DAILY NEWS
(April 23, 1964)
"Made Public"

LBJ Moves to Pry Debt Case Facts From AF

A-12 THE EVENING STAR Washington, D. C., Thursday, April 23, 1964

DEFENDANT'S EXHIBIT 3 Mot 4-24-64

Johnson Orders AF to Tell How Black Shifted Contract

Only upon reading these headlines, and after denying a motion for mistrial, the Trial Court ordered (on his own motion) the jury to be locked up. (Tr. 1248, Diss. Op., p. 23; App. A, *infra,* pp. 26a-27a).

Originally, the trial of the case had been set for February 17, 1964 at respondent's request, to give respondent time to comply with orders for discovery and a bill of particulars by January 15, 1964.

The civil suit filed in the same District Court against petitioner and the then Secretary of the Majority Robert G. Baker in September of 1963 had caused rapidly increasing unfavorable newspaper, television and radio publicity in the district. Public hearings before the Committee on Rules and Administration, United States Senate, with steady coverage by all news media began in the early part of 1964. Petitioner's name was constantly and prominently associated with Mr. Baker's as "Baker's Washington partner and associate", as an alleged "influence peddler", etc. (App. B, pp. 29a, *et seq.*).

Early in January the Assistant United States Attorney in charge of the case asked petitioner's counsel for an extension of time within which to comply with the discovery orders. Petitioner's counsel consented to such extension and a corresponding continuance of the trial date.

At 9:30 on the morning of January 6, the Assistant United States Attorney and counsel for petitioner agreed to meet at 10:00 o'clock in the courtroom of the Chief Judge to request jointly a continuance of the trial date (J.A. 30).

Between 9:30 and 10:00 o'clock, the Department of Justice instructed the Assistant United States Attorney not to seek or agree to any continuance, and thereafter relieved him from the case. Two special prosecutors were assigned, who refused to honor the previous agreements (J.A. 31). Petitioner's counsel, therefore, on February 4, 1964, filed a written motion for continuance.

That motion (J.A. 23, *et seq.*) was heard before the Chief Judge on February 6. The Court stated that it was not "continuing any case until November —*any case*" (Tr. of Feb. 6, 1964, p. 2); that petitioner's counsel had a "lost cause" if he suggested continuing this case until November (*ibid.*);[3] that this was "a stall on the part of the Defendant" (*ibid.*, p. 4). Hearing further argument and after reading the motion papers, the Court stated: "I will not postpone the case until November; I will not do that" (*ibid.*, p. 13). By a Memorandum and Order (App. A, *infra,* pp. 1a-3a) the Court denied the motion, setting trial for April 13th. The Order expressly provided that: "[No] further motions contributing to delay will be entertained on behalf of either side".

After the filing of the Order, the Chief Judge (on respondent's oral motion to try the case on February 17) stated:

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[3] The same Judge set Robert Baker's trial date on a tax evasion indictment since returned, for October 18, 1966, when Baker was arraigned on January 24 of that year.

> I want you to definitely understand what has happened here this morning. This case goes to trial on April 13, no matter what the reason for continuance might possibly be, other than something catastrophic in the meantime. (Tr. 4, Hearing of Feb. 13, 1964.)

Adverse publicity mounted. Just prior to the trial date, petitioner was publicly accused of having illegally given Mr. Baker $10,000.00 in hundred dollar bills for the President's campaign. (App. B, *infra*, p. 29a) Judge Hart denied a renewed motion for continuance on the strength of the Chief Judge's Order.

Motions for transfer were denied on April 10, 1964, by Judge Hart, and again by the Trial Judge (Tr. 8) when the trial opened on April 16, 1964.

Newspaper publicity on that day was headlined: "BAKER ASSOCIATE BLACK GOES ON TRIAL FOR EVADING $91,000 IN TAXES." It reported prominently that the Government opened its case against petitioner by calling him an "influence peddler." (App. B, *infra*, p. 87a)

Petitioner's immediate motion for mistrial was denied. The Court also denied counsel's request to interrogate the jury as to whether any of them had read or noticed any of the publicity.[4]

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[4] The Court did not instruct the jury not to read newspapers or stories about the Baker case. He just instructed them not to read about this case (Tr. 30). Naturally, to find out whether any story involved this case, the jurors had to read at least the headline or listen to part of the comments on television before (contrary to all laws of human nature) dropping the newspaper or switching off the set.

(f) Prosecutor's Misconduct.

From the very beginning, the prosecution, by its unfair opening statement inferring "influence peddling" (Tr. 84-85), their questioning of witnesses to elicit irrelevant testimony as to the problems petitioner's clients had in Washington (Tr. 673, *et seq.*), their pressure to get the case tried at the height of adverse publicity, by "leaks" to the press (Tr. 181), by the introduction of entirely irrelevant evidence with regard to services rendered by petitioner and personages entertained by petitioner,[5] took most unfair advantage of the atmosphere of prejudice created by the Senate investigation.

(g) Coerced testimony from Petitioner's Attorneys.

Petitioner's attorney Baird was coerced to testify before the grand jury by threat of indictment. (Diss. Op., pp. 21, 23; App. A, *infra* p. 25a). While part of Baird's services may not have been exclusively legal services, he actively represented petitioner in this case when his cooperation with the special agent was first coerced, and he was interrogated by the special agent and later made to testify before the grand jury, when he was supposed to marshal facts to be used in petitioner's defense.

His replacement attorney Laurence Bernard was subpoenaed—again as a prosecution witness, and his testimony and a brief authored by him (Gov. Exh. 13) which contained erroneous prejudicial and irrelevant statements neither made, nor signed, nor ratified by

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[5] In spite of the repeated concession by Government counsel that expense deductions on the returns were not in issue.

petitioner, relating to taxable years not in issue, were admitted over objection.

Thus deprived of the opportunity of a fair trial before an impartial jury, on evidence requiring a directed verdict in his favor (Diss. Op., p. 23; App. A, p. 24a), petitioner was convicted by press and prejudice.

REASONS FOR GRANTING THE WRIT

(a) Introduction

Petitioner was denied his Constitutional right under the Fifth Amendment to "due process of law" and under the Sixth Amendment to a trial "by an impartial jury".

Five of the seven "Questions Presented" in this petition relate to violations of petitioner's Constitutional rights. Each violation deprived him of a fair trial. Cumulatively, they deprive him of his liberty without due process of law.

One of the Constitutional questions here presented is now before this Court in *Samuel H. Sheppard* v. *E. L. Maxwell*[6]—the impact on the individual's Constitutional rights under the Fifth and Sixth Amendments of widespread adverse publicity prior to, and during trial.

Another, the coerced testimony of petitioner's attorneys, is tangentially involved in *James R. Hoffa* v. *U.S.A.*[7]

Though not involving Constitutional problems, this Court's answers to Questions 4 and 5 are important

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[6] October Term, 1965, No. 490.

[7] October Term, 1964, No. 794.

for the administration of the criminal tax evasion statute, because of the continued erosion by the Circuit Courts of Appeal of the doctrines of this Court as laid down in *Holland* v. *U.S.*, 348 U.S. 121; 75 S.Ct. 127 (1955) and *Spies* v. *U.S.*, 317 U.S. 492; 63 S.Ct. 364 (1943).

As to all Questions raised herein, the Court of Appeals has decided the Constitutional and Federal questions involved "in a way which is in conflict with applicable decisions of this Court, or in conflict with a decision of another Court of Appeals on the same matter". (Rule 19 (b) of the Rules of this Court).

In addition, the Court below has so far sanctioned a departure by the District Court from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, under Rule 19 (b), *supra.*

(b) Failure to grant continuance or transfer during Senate investigation-inspired publicity was violation of Petitioner's rights under Fifth and Sixth Amendments.

[Conflict with *Delaney* v. *U.S.*, 199 F.2d 107, (C.A. 1, 1952); *Marshall* v. *U.S.*, 360 U.S. 310; 79 S.Ct. 1171 (1959).

Counsel are loath to believe, and hesitant to charge before this Court, that representatives of the Executive branch of the Government stooped to take advantage of a prejudicial atmosphere created by sensational news emanating from a controversial investigation by the Legislative branch. Yet, the unseemly haste of the Department of Justice, pressing this case for trial in a sudden reversal of previous policy

and agreement,[8] leaves no doubt that over-zealousness in high and responsible places caused this case to be brought to trial at the zenith of the adverse publicity against petitioner emanating from the Legislative branch of the Government.

The holding by the Court of Appeals to the effect that the Chief Judge's pre-judged denial of the motion for a continuance was not an abuse of discretion, therefore is in direct conflict with the holding of the Court of Appeals for the First Circuit in *Delaney* v. *U.S., supra.* In *Delaney* the Court reversed a conviction because of denial of a continuance, where "the United States, through its Legislative Department, by means of an open committee hearing held shortly before a trial of a pending indictment, caused and stimulated . . . massive pre-trial publicity on a nationwide scale." [at p. 113].

Chief Judge McGuire held that the determining factor of whether a fair trial would be possible was what would be disclosed upon the *voir dire.* (App. A, *infra,* p. 2a). This Court has held that "prejudice resulting from publicity may be so subtle that it escapes the ordinary methods of proof", *Estes* v. *State of Texas,* 381 U.S. 532; 85 S.Ct. 1628 (1965). (Concurring Op., p. 578). *Rideau* v. *Louisiana,* 373 U.S. 723 (1963); 83 S.Ct. 1417; *Turner* v. *State of Louisiana,* 379 U.S. 466 (1965); 85 S.Ct. 546; *White* v. *State of Maryland,* 373 U.S. 59 (1963); 83 S.Ct. 1050, and has pointed out the "normal reluctance of a juror to concede his bias before his peers". *Irwin*

[8] To a point where the experienced prosecutor in charge of the case was replaced by two specially assigned attorneys from the Department of Justice, and his previous request for, and agreement to a continuance was dishonored.

v. *Dowd,* 366 U.S. 717, at p. 728; 81 S.Ct. 1639 (1961). Earlier, this Court held, in *Krulewitch* v. *United States,* 336 U.S. 440, at 453; 69 S.Ct. 716 (1949), that: "The naive assumption that prejudicial effects can be overcome by instructions to the jury, * * * all practicing lawyers know to be unmitigated fiction".

There was no reason for the Chief Judge to peremptorily announce to the parties (and to his associate Judges who might *and did* hear later motions for continuance or transfer) that: "Nothing short of a catastrophic nature" would keep this case from being tried during the week of April 13, 1964. Longer continuances under similar circumstances have been granted by this District Court at prior occasions,[9] and since, by the Chief Judge, in the case of Robert G. Baker.

It is submitted that the refusals of continuance or transfer by the Trial Court were an abuse of discretion and a violation of "due process". With the frequency of Congressional investigations in modern times, the conflict between the decision of the Court below and that of the First Circuit Court of Appeals in *Delaney, supra,* requires a pronouncement by this Court endorsing the holding in *Delaney.*

[9] *United States* v. *Carver,* Cr. No. 836-52 (US DC DC) (unreported) (J.A. 92).

(c) Failure to declare a mistrial because of sensational and highly prejudicial publicity during trial and prosecutor's misconduct was a violation of Petitioner's rights under the Fifth and Sixth Amendments.

[Conflict with *Marshall* v. *U.S.*, 360 U.S. 310; 79 S.Ct. 1171 (1959); *Janko* v. *U.S.*, 366 U.S. 716; 81 S.Ct. 1692 (1961); *Estes* v. *State of Texas, supra; Irwin* v. *Dowd,* 366 U.S. 717, 81 S.Ct. 1639 (1961); *U.S.* v. *Accardo,* 298 F.2d 133 (C.A. 7, 1962).]

Senior Circuit Judge Wilbur K. Miller, in his dissent herein (Op., p. 23, App. A, pp. 26a-27a, *infra*), citing this Court's decision in *Marshall* v. *U.S., supra,* was "convinced that the Trial Court erred in denying a defense motion for a mistrial because of inflammatory newspaper articles which had just appeared."

Some of the newspaper articles Judge Miller referred to were headlined: "BAKER ASSOCIATE BLACK GOES ON TRIAL FOR EVADING $91,000 DOLLARS IN U.S. TAXES" and "GAVE BLACK $7700 FOR INFLUENCE IN S.E.C." and "JOHNSON ORDERS A.F. TO TELL HOW BLACK SHIFTED CONTRACT."

In all the articles petitioner was described as an "influence peddler" and prominent reference was made to his alleged "partnership" with Baker. Representative samples of the publicity reproduced in App. B, *infra,* pp. 29a-103a), indicate how inflammatory this publicity was.

Assuming, as we must, that the jury at least saw the headlines,—if it did indeed follow the Judge's limited instruction not to read on after seeing them—it must have gained the impression from these headlines alone that the President of the United States was

sufficiently aroused to order a personal investigation of petitioner on "influence peddling"; charges that had nothing to do with this case.

Information "so prejudicial it could not be directly offered as evidence" (*Marshall* v. *U.S., supra*) must have reached the eyes of a jury which was particularly conditioned and receptive to the inflammatory publicity after the prosecutor called Mr. Black, in his opening statement, "a man . . . [who] knows his way around Washington and can get things done there for his clients." Respondent's counsel stressed that petitioner was "not a lawyer . . . not an accountant [but] . . . a man who has represented to people that he knows how to get things done, and that he could put them in contact with people who could get things done, and that his services in this respect are of substantial value." The prosecutor continued "What kind of things could he get done, is another question, I am sure you will be interested in considering. . . ." and, after an objection, upon inquiry by the Court, again urged "Well, your Honor, the testimony of all the witnesses in this case will include what they were paying for, and the testimony as to what they were paying for, in the Government's view, will show what I said, that Mr. Black was retained by them to get things done because he knew his way around Washington, and could do things for them." (Tr. 84-85.)

> That the United States prosecuting attorney overstepped the bounds of that propriety and fairness which should characterize the conduct of such an office in the prosecution of a criminal offense is clearly shown by the record.
>
> *Berger* v. *U.S.*, 295 U.S. 78, at p. 84; 55 S. Ct. 629, at p. 631. (1935)

We respectfully submit that the prosecutor in this case went far beyond his duty of advocacy and violated the tenets laid down by this Court in *Berger, supra*:

> The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice will be done. As such, he is in a peculiar and very definite sense the servant of the law, the twofold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor—indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.
>
> *Berger* v. *U.S., supra*, 55 S.Ct. 629, at 633, 295 U.S. 78, at p. 88.

Cumulatively, the prosecutor's "foul blows" and the newspaper headlines of "influence peddling" made a fair trial impossible. Petitioner cannot understand why respondent does not take the course before this Court that it took in *Janko* v. *U. S.*, 81 S.Ct. 1692 (1961) where, on the strength of one single newspaper article, the Solicitor General confessed error to this Court and urged reversal in the following language:

> The Court of Appeals concluded that the publication of this article did not deprive petitioner of a fair trial because (a) the trial court had repeatedly warned the jurors against the reading of any such articles and (b) petitioner's counsel

had rejected the opportunity of questioning the jurors directly as to whether any of them had read the article in question.

* * * * * *

In the light of the character of the extraneous information contained in the article, we think that, before the jury was finally discharged, the trial court should have assured itself as to whether the jurors had in fact read the article. Counsel's reluctance to have the jury questioned during the trial may be understandable. (Briggs v. United States, 221 F. 2d 636, 639 (C.A. 6); Krogman v. United States, supra, 228-229).

The holding of the Court of Appeals for the District of Columbia furthermore is in conflict with that of the Court of Appeals for the Seventh Circuit in *U. S.* v. *Accardo,* 298 F.2d 133, where, again on a single newspaper article, the Court reversed a conviction despite the Trial Court's "general admonitions" to the jury, and "general inquiry during the *voir dire* examination."

As this Court said *In re Murchison,* 349 U.S. 133, 136; 75 S.Ct. 623, 625 (1955), and reaffirmed in *Estes* v. *Texas,* 85 S.Ct. 1628, 1633:

> A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the *probability* of unfairness. * * * [T]o perform its high function in the best way 'justice must satisfy the appearance of justice,' Offutt v. United States, 348 U.S. 11, 14, 75 S.Ct. 11, [99 L.Ed. 11]. [Emphasis by the Court].

It is respectfully submitted that in the instant case there was not only the probability of unfairness, but a certainty of unfairness and that the Court, aware that some damage had been done, instead of belatedly locking up the jury, should have taken the course suggested by the Court of Appeals for the Second Circuit in *Dunn* v. *U.S.*, 307 F.2d 883 (C.A. 5, 1962):

> * * * Trials are rarely, if ever, perfect, but gross imperfections should not go unnoticed. In every case involving improper argument of counsel, we are confronted with relativity and the degree to which such conduct may have affected the substantial rights of the defendant. It is better to follow the rules than to try to undo what has been done. Otherwise stated, one 'cannot unring a bell'; 'after the thrust of the saber it is difficult to say forget the wound'; and finally, 'if you throw a skunk into the jury box, you, can't instruct the jury not to smell it.'
>
> * * * *
>
> * * *At this point, it would have been relatively simple for the Court to have discharged the jury who heard the prejudicial remarks and impaneled another one.* (Emphasis supplied)
>
> at pp. 885, 886.

(d) Failure to interrogate the Jury contributed to the violation of Petitioner's right to a fair trial before an impartial Jury.

[Conflict with *U. S.* v. *Accardo, supra*].

Even though it might have been futile to interrogate the jury because of their natural reluctance to admit a violation of the Court's instructions or to confess to "their bias before their peers", the Trial Court's re-

fusal to do so *in camera* as expressly requested by counsel and the Circuit Court's approval of this refusal, constitute a clear conflict with the decision in *Accardo, supra,* specifically requiring "careful examination of each juror out of the presence of the others, to determine the effect of the articles . . .". It constitutes a disregard of the lower Court's own prior pronouncements in *Schoeneman* v. *United States,* 317 F. 2d 173 (CA DC, 1963), and in *Coppedge* v. *United States,* 272 F.2d 504 (CA DC, 1959).

In the instant case, where petitioner stood accused before the jury of alleged income tax evasion, it was of singular importance to ascertain whether the jury had, in fact, obtained knowledge of the virulent publicity relating to an order by the President of the United States to investigate so-called "influence peddling" and a "partnership" with Mr. Baker, then publicly accused by Senators, press, radio and television of malfeasance and criminal conduct.

(e) Proof of failure to itemize, characterize and identify ultimate recipients of funds does not supply proof of that specific criminal and evil intent to evade taxes, required for conviction under Title 26 U.S.C., Sec. 7201.

[Conflict with *Spies* v. *U.S.,* 317 U.S. 492; 63 S. Ct. 364 (1943); *Holland* v. *U.S.,* 348 U.S. 121; 75 S.Ct. 127 (1955); *Ingram* v. *U.S.,* 360 U.S. 672 (1959); 79 S.Ct. 1314.

Spies v. *U.S., supra,* held:

> Willful but passive neglect of the statutory duty may constitute the lesser offense, but to combine with it a willful and positive attempt to

> evade tax in any manner or to defeat it by any means lifts the offense to the degree of felony.
> —at p. 499.

This Court went on to illustrate conduct from which an affirmative, willful attempt to evade taxes may be inferred.

None of the conduct described in *Spies,* no transaction or conduct "the likely effect of which would be to mislead or to conceal," is present in this case. *Spies* is specific that the "tax evasion motive" must play a part in the conduct of the defendant if a conviction for the offense of attempting to defeat or evade Federal tax is to be supported.

As the dissenting opinion points out, "proof of criminal intent on [the part of petitioner] was . . . conspicuously absent."

Even the majority's summary shows no evidence of specific intent to defeat tax. It shows (Op. pp. 9, 10; App. A, *infra,* pp. 13a-14a), that each of the payors of funds claimed to be taxable to petitioner paid these funds to him as a conduit, to be spent by him for the payors' expenses. These payors were satisfied that he did so. There was no evidence of any kind that petitioner converted these funds to his own use; that he spent them for his own purposes; or that his net worth increased, and that the funds therefore became his income within the purview of the statute. On the contrary, the majority had the same doubt as to the use to which the funds were put, as had the Trial Court (Tr. pp. 2162-2164). For the majority found:

> It may be that some or all of the unreported receipts were not retained by appellant [peti-

> tioner] for his personal benefit in the ordinary sense. (Op., pp. 20, 21). (App. A, p. 24a)

But, similarly to the Trial Court (who stated that the petitioner might be "the scapegoat to cover up [the] slimy trails as to what happened"), the majority below found that the specific intent necessary for conviction was supplied by the fact that petitioner failed to itemize and identify (either in his tax return or at the trial) the ultimate recipients of all of the funds which he disbursed for his clients:

> One engaged in his business has perhaps to face some delicate problems of identification and characterization in the itemization of expenses. It may not be possible to serve both client and Commissioner at the same time. But, if it is the latter who is sacrificed, that choice is no less knowing and wilful because of the harsh dilemma which occasions it.[10] (Op., p. 21). (App. A, p. 24a).

Willfulness is only one element of the offense. Proof even of "a *'willful'* decision" to "identify", "characterize" and "itemize" the disbursements of these funds *received for expenses,* which the majority below held was inferable on the record, is insufficient to supply at the same time proof of another, entirely separate element of the alleged crime: specific intent to evade and defeat tax. *Holland* v. *U.S.,* 348 U.S. 121 (1955), 75 S.Ct. 127; *Wardlaw* v. *U.S.,* 203 F.2d 884, 886 (C.A. 5, 1953).

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[10] This language used by the majority is additional indication of the invidious persuasiveness of the prosecutor's opening statement as to petitioner's being a man who "gets things done because he knew his way around Washington," and the prejudicial effect of the publicity that surrounded the trial.

Specific intent on the part of the accused to defeat or evade the tax must be proved by independent evidence. *Spies* v. *U.S., supra; Mann* v. *U.S.*, 319 F.2d 404 (C.A. 5, 1963).

If one must infer from the evidence (as the majority below did) that "it may be that some or all of the unreported receipts were not retained by [petitioner] for his personal benefit in the ordinary sense", then there could be no intent to defeat tax, where no tax was due, namely, on amounts "not retained by appellant [petitioner] for his personal benefit."

> In a prosecution for a wilful attempt to defeat and evade taxes, it is not sufficient to show merely that a lesser tax was paid than was due. It is essential to prove that the acts complained of were *wilfully done in bad faith and with intent to evade and defeat the tax.* (Emphasis supplied).
>
> —*United States* v. *Ragen,* 314 U.S. 513, 515 (1942), 62 S.Ct. 374, 86 L.Ed. 383.

The majority below stated, practically *in haec verba,* that petitioner was not shown beyond a reasonable doubt to have had actual knowledge that a tax was owing on the funds received for disbursement on behalf of his clients. Under this Court's holding in *Ingram* v. *United States,* 360 U.S. 672, 79 S.Ct. 1314 (1959), such finding requires reversal, the trial court having erred in not directing a judgment of acquittal. See aslo: *Christoffel* v. *United States,* 338 U.S. 84, (1949); 69 S.Ct. 1447, 93 L.Ed. (1826); *Politano* v. *United States,* 220 F.2d 217 (C.A. 10, 1955); *McKenzie* v. *United States,* 266 F.2d 524 (C.A. 10, 1959).

An indispensable element of the crime of tax evasion is knowledge that a tax is imposed.

—*Ingram* v. *U.S.*, 360 U.S. 672; 79 S.Ct. 1314, at p. 1321 (1959).

. . . The intent involved in this offense is not inherent in the act itself, but is a specific intent involving *bad purpose and evil motive* and that specific intent must be proved by or clearly inferred from the evidence . . . . (Emphasis supplied).

—*Wardlaw* v. *U.S.*, 203 F.2d 884, at p. 886 (C.A. 5, 1953).

(f) There was no proof of the specific criminal intent required under 26 U.S.C. Sec. 7201 in view of Petitioner's reliance on his Accountant and Attorney, who were furnished all necessary information and instructed to prepare correct returns.

[Conflict with *U.S.* v. *Pechenik*, 236 F.2d 844 (C.A. 3, 1956); *Hartman* v. *U.S.*, 215 F.2d 386 (C.A. 8, 1954).

The facts in this case as shown by the Government's own evidence, interpreted in the light most favorable to respondent, are identical with those underlying the decisions of the Third Circuit in *U.S.* v. *Pechenik*, 236 F.2d 844 (C.A. 3, 1956), and that of the Eighth Circuit in *Hartman* v. *U.S.*, 215 F.2d 386 (C.A. 8, 1954). On these same facts, the Court of Appeals for the District of Columbia has rendered a decision in conflict with the decisions of the Court of Appeals for the Third Circuit and the Court of Appeals for the Eighth Circuit on the same matter. The facts in

Hartman and *Pechenik* are clearly set out in their respective opinions.

As in *Hartman,* petitioner "never attempted to make out an income tax return himself and did not know how to go about it".* As in *Hartman,* petitioner "left it entirely to the bookkeeper and accountant to record the transactions and no entries on the books were found in his handwriting."* As in *Hartman,* Muskrat and Baird were witnesses for the Government, but corroborated petitioner to the extent that "they took full responsibility for making out the income tax return and obtaining his signature thereon."* As in *Hartman,* "there was no evidence that petitioner gave any directions or made any suggestion that the return should be falsified in any respect."* On the contrary, and beyond *Hartman,* in the case at bar the Government witnesses testified that petitioner's instructions to them were to make out the returns as correctly as possible (Tr. 1255, 1657-8); and to go to the Kansas City office and obtain instructions from Internal Revenue as to how to handle the very transactions in issue.

There is even more striking analogy with the *Pechenik* case.

As in *Pechenik,* petitioner "left the books, bookkeeping and preparation of tax returns to the bookkeeper and accountant",* Baird and Muskrat. As in *Pechenik,* there is "no evidence that [petitioner] interfered"* with either Muskrat or Baird or "with the books".* As in *Pechenik,* Baird and Muskrat acted as the bookkeeper and the "inside office man"* who made the decisions as to classification of expenditures

* Quoted words from the *Pechenik* opinion.

according to their own best judgment. As in *Pechenik* the bookkeeper testified that petitioner "did not give him directions as to how to charge the items in issue".* As in *Pechenik,* the accountant prepared the tax returns from the books and records. As in *Pechenik,* neither Muskrat nor Baird "attributed the errors to the [petitioner] or to any directions or information given by the [petitioner]".* As in *Pechenik,* Muskrat's explanation was that "he did not examine the invoices [and other evidence of payments] but these were available."* As in *Pechenik,* "nothing was concealed; no information was refused".* As in *Pechenik,* there is no proof of participation by Muskrat or Baird in the crime charged.

The majority of the court below in regard to the basic merits of the prosecution states (Op. p. 11, App. A, p. 15a): "The question would seem to be whether the Government is entitled to get to the jury on a showing of substantial unreported receipts of alleged expense reimbursements, when there is no explanation by either the payor or the payee of what use was made of the money."

The majority of the court below held the evidence established that Baird and the certified public accountant, James Muskrat, prepared petitioner's personal tax returns. Baird and Muskrat prepared the Blyco Corporation returns for 1957 and 1958 and petitioner's "files, records and bank statements were available to him [Muskrat]" (Op., p. 13) and when Muskrat did not know how to handle a particular matter, he consulted Baird. The contention of Baird, who was under threat of prosecution himself in this

* Quoted words from the *Pechenik* opinion.

matter, that his responsibility was limited to accumulating expense information, was rejected by the entire court below. In this regard the majority stated (Op., p. 17, App. A, p. 21a):

> "The inference is clear that Baird's participation with Muskrat in the preparation of [petitioner's] tax returns was not limited to expenses. Rather the conclusion suggested is that Baird was overseeing all of Muskrat's performance."

The majority further states Muskrat and Baird omitted the so-called "unreported receipts," and "Baird did not think it necessary to report the receipts that are not reflected on 1099 forms." (Op., p. 18, App. A, p. 22a).

The majority reviewed the so-called "unreported receipts" and stated in its summaries of the unreported receipts (App. A, pp. 13a-14a) because the items involved were the payors' expenses paid through petitioner, the payors filed no W-2 or 1099 IRS forms. As the majority pointed out, form W-2 is filed by the employer reporting compensation (i.e., salary) paid under a circumstances where withholding is necessary and form 1099 is used to report other income compensation, *not expenses,* where no withholding obligation attaches. The assumption of the majority below that payors' expenses are to be reported by a taxpayer who disburses these expenses is not correct and is not in accordance with respondent's instructions controlling the preparation of income tax returns. When respondent endeavored to change the situation regarding the reporting of such expenses of payors and inserted a line in the tax forms of respondent for this purpose, respondent later instructed

all tax payors and all Revenue officers to disregard the requirement that payees include in their tax returns expenses received and then account for the expenses in the return.

We submit the decision of Judge Miller correctly states the law concerning the facts here involved, and that a verdict of acquittal should have been directed by the Trial Judge. Rather than paraphrase Judge Miller's reasoning, we quote Judge Miller in this regard as follows (App. A, pp. 24a-27a):

> "Baird, who had long been Black's attorney, and Muskrat, his young and inexperienced accountant, prepared the returns, with very little, if any, participation by Black. Yet they were the principal witnesses against him, probably because, as Baird admitted, a special agent of the Intelligence Division of the Internal Revenue Service threatened him with criminal prosecution if he did not cooperate. Whether Muskrat was similarly threatened does not appear.
>
> Black's files were kept in Baid's office in Joplin, Missouri, where he and Muskrat had full access to them. In preparing the returns, Muskrat selected from the files the materials he thought he would need, but in many instances he relied upon forms W-2 and 1099 without attempting to verify them by comparing them with information contained in the files. He admitted that he could not say the transactions about which he was questioned were not represented by some documentation in the files.
>
> Muskrat also testified that on form 1099 there were seven categories of payments to be listed by

the payor, but there was no category for expense advancement or reimbursements. Obviously, the payor's inclusion of the latter two items in form 1099 would cause the form to reflect a greater sum than that paid by way of compensation only. Muskrat said when the 1099's and W-2's for 1958 totaled more income for Black than the books showed, he looked no further. If the total had been less, he said he 'would have done some more checking.' This is indicative of Muskrat's inexperience.

In spite of the possibly coerced cooperation of Black's two associates, the evidence permits, if it does not actually require, the conclusion that Black gave Baird, or the latter otherwise had, full information about his income, and that any understatement of income was due to the negligence of Baird and Muskrat. The record also rather definitely shows, I think, not only that Black had no real part in the preparation of the returns and depended on his attorney and accountant, but also that he had at the beginning instructed them to prepare true and accurate returns.

For example, Muskrat testified that Black told him when he began his work that his affairs were complex, that he was seldom in Joplin to assist in preparing his return, but wanted them to be as correct as possible. To that end, Muskrat said, Black asked him and Baird to go to Kansas City to consult the Internal Revenue Service to be sure they were preparing the returns correctly. The was never made because Baird decided not to go.

It is significant that Muskrat said Black never told him to omit any item of income from his tax return. He testified that he depended on Baird for information and that he saw Black only a few times. And Baird admitted he told Black the amount of his income and his estimated tax, thus showing the latter had no part in the preparation of the returns.

In the circumstances, I think it quite clear that the Government failed to show Black had knowledge of or participated in making any understatement of income for the years under consideration. If there was an understatement, Black is liable for the tax deficiency caused thereby; but he should not be punished criminally for the acts of his subordinates of which he knew nothing. Black was clothed with presumption of innocence and, in my view, it was never dispelled by proof of guilt beyond a reasonable doubt. Absent evidence of any criminal act on Black's part, the jury should have been instructed to find him not guilty. *United States* v. *Pechenik,* 236 F. (2d) 844 (3rd Cir. 1956):"

The conflict between the decision below and the decisions in *Pechenik* and *Hartman,* on absolutely identical facts, requires a decision by this Court to the effect that, where bona fide reliance on subordinates (who have all necessary information available and who are instructed to prepare a correct return) is shown, the criminal intent required for conviction under 26 U.S.C., Sec. 7201 is absent.

(g) Petitioner's Constitutional right to a fair trial was violated by the admission into evidence of a memorandum brief submitted by his former counsel in connection with administrative settlement negotiations (Gov. Exh. 13, J.A. 29, et seq).

Gov. Exh. 13 (J.A. 29, *et seq.*), is a brief, prepared, signed and submitted by Laurence Bernard, one of petitioner's former attorneys, to representatives of Internal Revenue, during settlement negotiations. There was no evidence below that petitioner had taken any part in its preparation or that he had even read it, let alone signed it.

While the jury was deliberating on the verdict, the Court, over petitioner's objection, permitted Exhibit 13 to be delivered to the jury in the Jury Room for use in its deliberations, without safeguarding instruction. The exhibit contains hearsay and argument, and lists amounts characterized as "omissions from gross income" for the taxable year 1959, a year dropped by the prosecution. The characterization ("omission from gross income") originated with Bennett, the Special Agent (Tr. 2266) and was inserted by Mr. Bernard at the agent's request. The brief contains errors and shows traces of careless preparation. Its immateriality by far outweighed its probative value and its admission over objection was a substantive departure from the accepted and usual course of judicial proceedings in addition to being a violation of petitioner's rights under the Fifth and Sixth Amendments.

(h) Petitioner's Constitutional right to a fair trial and to effective assistance of Counsel were violated by covert and subsequently overt cooperation of his Attorney with the Special Agent, procured by threat of prosecution of the Attorney.

[Conflict with *Massiah* v. *U.S.*, 377 U.S. 201; 84 S. Ct. 1199 (1964); *Coplon* v. *U.S.*, 191 F.2d 749 (C.A.D.C., 1951) (Cert. den., 342 U.S. 926); *Caldwell* v. *U.S.*, 205 F.2d 879 (C.A.D.C., 1953).

When Mr. Baird testified and his statements to the Special Agent became available under the Jencks Act, 18 U.S.C., Sec. 3500, petitioner became aware of the fact that Baird had been threatened with prosecution by the Special Agent and under this threat had given statements to the Special Agent while still employed as petitioner's attorney. Later, Baird testified before the grand jury and the trial jury, motivated by that same threat. That his cooperation was coerced, as was Muskrat's, was found as a fact by the Court of Appeals (Op., p. 21, App. A, *infra,* p. 25a).

A great deal of this coerced cooperation occurred when Baird was still in charge of preparing petitioner's defense in connection with the investigation that had been begun by special agent Bennett. Baird was in contact with Internal Revenue Service on petitioner's 1958 return as early as the fall of 1960, and acted as taxpayer's attorney in connection with this very investigation at a conference in the spring of 1961 in Kansas City (J.A. 267.)

Thus, petitioner confided in, and conferred with Baird as his counsel representing him in this investigation, without knowing that this same attorney at that time was under pressure and coercion from the

investigating agent to cooperate with the prosecutor under threat of becoming a defendant himself.

To what extent Baird violated his duties as an attorney representing petitioner in this very case and the investigation leading thereto (in contrast to his duties as petitioner's attorney and employee, during the taxable years in issue) is difficult to determine. There is no doubt that he cooperated extensively, testified liberally before the grand jury and on trial, and when becoming aware that the investigation might involve him, chose to assist the prosecutor rather than his client, without even advising petitioner of his having become respondent's agent rather than petitioner's.

His successor, Bernard, was also forced to testify against his client—although his testimony was mostly limited to identifying the brief (Gov. Exh. 13) that he had prepared, and which was unlawfully admitted in evidence against petitioner.

Whether Muskrat, the accountant, was coerced into testifying against petitioner is not quite clear. In any event, Muskrat having worked with Baird not only during the taxable years, but also in preparing the defense in the case at bar, his testimony and the Trial Court's peremptory order for production of his workpapers in the possession of petitioner's trial counsel, round out a picture of deprivation of the effective assistance of counsel.

The subversion of his friend and attorney by coercion under threat of prosecution is a clear-cut violation of petitioner's Fifth and Sixth Amendment rights.

In *Massiah* v. *United States,* 377 U.S. 201; 84 S.Ct. 1199 (1964), this Court condemned the use of an accomplice as a plant. In *Coplon* v. *United States,* 191 F.2d 749 (C.A.D.C., 1951) (cert. den. 342 U.S. 926), the Court of Appeals reversed the conviction of the defendant for the heinous crime of espionage because of the use of wire-tapping of conferences between defendant and her counsel. In *Caldwell* v. *U.S.,* 205 F.2d 879, (C.A.D.C., 1953) the use of a planted informer in defendant's attorney's office was condemned. It goes without saying that the use of petitioner's *attorney* as a coerced "Judas", informer, and star prosecution witness not only violates petitioner's rights under the Fifth and Sixth Amendments, but shocks the conscience and all concepts of fairness.

CONCLUSION

For the reasons stated above, petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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BERT B. RAND,
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by ----------
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Dated:

February 16, 1966.

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APPENDIX "A"

Opinions Below

[Filed, February 12, 1964]

MEMORANDUM

This is a motion for continuance filed on February 4, 1964, the cause having been set for trial in October of 1963 for the week of February 17, 1964.

There were two indictments originally involved and originally returned in the Western District of Missouri in the Spring of 1963, and transferred to this District for trial on the motion of the defendant early in July of that year. They allege false income tax returns.

Subsequently the cases were consolidated for trial upon the motion of the United States on November 14, 1963. On that same date, Judge Hart, who granted the motion for consolidation, heard and granted motions by the defendant for a bill of particulars for discovery and inspection. The order entered, in substance, was short, brief and to the point. Under it the United States was to furnish:

> "(1) the dates and amounts of every specific item which defendant allegedly failed to report, including the person or firm that Plaintiff alleges to have paid such amount, and in the event that the Plaintiff contends that the Department made improper deductions, it is:
>
> "FURTHER ORDERED, that Plaintiff furnish Defendant with the amount or amounts, the payee or payees, and the date of any payment that Plaintiff contends was an improper deduction, and it is:
>
> "FURTHER ORDERED, that the remainder of the Motions for Bills of Particulars be, and they are in all respects, denied."

On January 7, 1964 the Court extended the time for compliance by the Government with this order to April 6 of this year, it having represented to the Court that because

of certain changes in staff personnel and the added workload, additional time was now required by it to comply with the Court's order. Defense counsel indicated the defense had no objection to the granting of the additional time. Thus, Judge Hart, by his action, precluded trial of the case on February 17 by granting the request by the Government for an extension of time with reference to the Bill of Particulars.

In the meantime, defendant has now filed this motion for a further continuance, the suggestion being made that the trial date should now be put over until after the national elections in November 1964.

As indicated to counsel orally upon the hearing of this motion, and now formally, that is denied.

The point attempted to be made was that since the right to trial by jury guarantees to the criminally accused a fair trial by a panel of impartial jurors, that cannot be had in the present circumstances because of extended publicity with reference to a certain matter now under investigation by a committee of the Senate of the United States into which the name of the defendant has been brought and by the further fact that he still may be called as a witness before that body.

The answer to this is a simple one. The matter of the impartiality of a juror is to be evaluated not upon what might have appeared in the public press alone, but in combination with what has been or will be disclosed upon the voir dire, unless what has already appeared would make a fair trial impossible. We do not find this to be so.

The issue is simple. In essence, the defendant is charged with returning for income tax purposes less than he actually received. The necessary time to prepare for trial depends upon many factors and each case stands by itself, depending upon the nature of the charge, the issue presented, and the availability of material witnesses. The

defendant has been aware of the offense with which he is charged for a long time and he was the one who suggested and brought about the change of venue.

The Court, however, does feel in the circumstances that sufficient time should be proffered to him for the purpose of securing the services of accountants. They do not have to be nationally known and the suggestion that they do falls on hard ground.

Meanwhile the Government has now filed a further motion to require submission of documentary evidence for inspection prior to trial, and this less than a week away from the originally scheduled date of trial. This latter motion is referred to the appropriate Criminal Court for disposition in the ordinary course, and it is suggested that the matter be disposed of as soon as it can be marked up.

Nor is there any need for further oral argument with reference to this motion for continuance, except to observe that the required information by way of bill of particulars, if it has not been complied with up to now, and the defendant says it has not, should be forthcoming immediately. (See affidavit of Hans Nathan, Esq., in support of motion for continuance filed February 4, 1964, para. 13.)

No further motions contributing to delay will be entertained on behalf of either side.

The Court, therefore, now fixes trial for the week of April 13, 1964, and it is so ordered.

/s/ MATTHEW F. MCGUIRE,
Chief Judge

February 12, 1964

[Filed, June 22, 1964]

On the 19th day of June, 1964, came the attorney for the government and the defendant appeared in person and by counsel, Hans A. Nathan and Warren Magee, Esquire,

It is adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Violation of Section 7201 of Title 26 of the U.S. Code (Evasion of Income Tax) as charged on counts number one and two and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of FIFTEEN (15) MONTHS TO FOUR (4) YEARS and to pay a fine of Ten-thousand Dollars ($10,000.00) on count one; FIFTEEN (15) MONTHS TO FOUR (4) YEARS and to pay a fine of Ten-thousand Dollars ($10,000.00) on count two; said sentences to run by the counts concurrently and concurrently with sentence imposed in Criminal Case No. 650-63.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ JOHN J. SIRICA
United States District Judge

On this 19th day of June, 1964, came the attorney for the government and the defendant appeared in person and by counsel, Hans A. Nathan and Warren Magee, Esquire.

It is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of Violation of Section 7201 of Title 26 of the U.S. Code (Evasion of Income Tax) as charged on count number one and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment of a period of FIFTEEN (15) MONTHS TO FOUR (4) YEARS and to pay a fine of Ten-thousand Dollars ($10,000.00).

It Is Ordered that the Clerk Deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of defendant.

/s/ JOHN J. SIRICA
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18,926

No. 18,927

FRED B. BLACK, JR., APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Appeals from the United States District Court
for the District of Columbia

Decided November 10, 1965

Mr. Bert B. Rand, with whom *Messrs, Hans A. Nathan, Warren E. Magee* and *Thomas G. Laughlin* were on the brief, for appellant.

Mr. K. William O'Connor, Attorney, Department of Justice, with whom *Assistant Attorney General Oberdorfer, Messrs. John P. Burke, Richard B. Buhrman and Joseph M. Howard, Attorneys,* Department of Justice, were on the brief, for appellee. *Messrs, David C. Acheson,* United States Attorney at the time the record was filed, and *Frank Q. Nebeker,* Assistant United States Attorney, also entered appearances for appellee.

Before WILBUR K. MILLER, *Senior Circuit Judge,* and DANAHER and MCGOWAN, *Circuit Judges.*

MCGOWAN, *Circuit Judge*: These appeals are from convictions under two indictments charging appellant with violations of Section 7201 of the Internal Revenue Code of 1954. 26 U.S.C. § 7201. That statute imposes criminal sanctions upon "Any person who willfully attempts in any manner to evade or defeat" federal tax liability. One indictment related to the year 1956; and the other to 1957, 1958, and 1959. The 1959 count was dismissed by the Government at the outset of the trial, but the latter eventuated in jury findings of guilt as to the other

years. Concurrent sentences of confinement and fine were imposed.

Counsel have pressed upon us in brief and argument a large number of contentions, which vary greatly in their nature and substance. As befits the seriousness of the consequences faced by appellant, we have examined them all, although we think it neither feasible nor necessary to deal with each of them herein. The central and most substantial issue presented is whether a jury could permissibly have found from the evidence that appellant's conduct came within the proscription of the statute. Although appellant's unsystematic and unorthodox manner of operations leaves some obscurities as to both method and motive, we believe the jury was entitled to find as it did. Before coming to grips with that major question, we dispose of some of the other issues. In no instance have we found occasion to disturb the convictions.

I

1. *The Statute of Limitations*

Appellant contends that prosecution under the indictment relating to 1956 was barred by the lapse of time. This issue was first raised by a motion to dismiss in the court where the indictments were first returned in the spring of 1963, *i.e.*, the United States District Court for the Western District of Missouri. That motion was denied by Judge Oliver in an opinion reported at 216 F. Supp. 245. It was renewed in advance of trial after the case was transferred at the appellant's request to the District of Columbia in May of 1963. The motion was again denied by Judge Hart.

In view of *Jaben* v. *United States*, 381 U.S. 214, (1965), decided while this appeal was under submission, we need refer to only one aspect of the issue. The charge of evasion in respect of 1956 was first initiated by the filing of a com-

plaint with the United States Commissioner in the Western District of Missouri on January 29, 1963. If this complaint was founded upon an adequate showing of probable cause, it is clear that the 9-months extension proviso contained in the Internal Revenue Code, 26 U.S.C. § 6531, was operative and comfortably embraced the time of the subsequent return of the indictment. *Jaben* ends the argument as to that adequacy. The representations made to the Commissioner in that case are virtually identical in form and substance with those involved here. They were found to be sufficient by the Supreme Court there. We must take them to be so here.

2. *The Fairness of the Trial*

Appellant insists that the outcome of his trial was significantly prejudiced in a number of ways, ranging from the denial of his request for a long continuance or a transfer of the case back to Missouri to allegedly improper characterizations by the prosecutor in his opening and closing arguments. We do not find that any of these warrant reversal, and we confine our discussion to those upon which appellant's principal reliance is placed.

As noted above, this case was, at appellant's request, transferred in May of 1963 from Missouri to the District of Columbia for trial. The District Court here granted appellant extensive discovery, which was to be completed by January 15, 1964, and the trial was scheduled for February 17 thereafter. On February 4, appellant asked for a continuance until after the elections in November. He represented that, beginning in September, 1963, the linkage of his name in the press with that of one Robert Baker had created political overtones which would make a fair trial impossible. The Chief Judge heard the motion, and rejected the request for a continuance until after the elections, although he did fix April 13 as the new trial date. He explicitly held that there was no reason to think that a fair trial could not be held in the current atmosphere. Early in

April appellant again sought a continuance, or alternatively, a transfer of the case back to Missouri. These motions were heard and denied by Judge Hart, who was of the view that the scattered references in the papers to appellant from September, 1963, to February, 1964, did not create an unduly prejudicial atmosphere. Judge Hart thought that appellant exaggerated the degree to which the citizens of Washington were aware of his existence—a surmise which was later supported by the fact that no one on the jury panel responded affirmatively to the *voir dire* question by defense counsel as to whether they had ever heard of the defendant.

The questions of the continuance and the transfer were well within the range of discretion committed to the trial court in the dispatch of its business; and we find no indication that this discretion was abused in any way. Judge Hart examined with care the material submitted in support of the continuance; and he gave similar attention to the request for transfer, although that came at an unjustifiably late point in the proceedings. We have no occasion to disagree with his conclusions.

A second area of complaint relates to assertedly prejudicial press publicity occurring in the course of the trial. The jury were repeatedly cautioned to avoid the communications media with respect to the case. A mistrial was asked shortly after the trial started because of one headline in a Washington newspaper: "Baker Associate Black Goes On Trial for Evading $91,000 in U. S. Taxes." Although this is hardly a model of journalistic restraint under the circumstances, the jury had been cautioned earlier, and the defense did not press a suggestion that the jurors be interrogated about this headline. The defense did not request at the outset that the jurors be sequestered throughout the trial and, indeed, appeared to be considerably less than happy (to the point of objection, indeed) with the court's *sua sponte* determination to effect such sequestration midway through the trial.

Our reading of the record suggests that the defense was quite conscious of the tactical pitfalls involved in too much insistence by it on elaborate and repetitive cautionary directions to the jury. It strikes us in the large that, once the trial had started, it was conducted just about as the defense preferred it to be, caught as it was in this perennial dilemma of over- or under-emphasizing the special circumstances of the defendant. When an adverse jury verdict is being appealed, this dilemma, of course, dissolves in the singleness of the purpose to get a new trial and a new chance with another jury. Thus, the prejudice proclaimed upon appeal may not have seemed to be such before the jury spoke. We, in fairness to the trial court as well as to appellant, must appraise it in the latter context; and we find no error.

A mistrial was sought at the time of the prosecutor's opening statement because of a characterization of appellant as one who held himself out as informed and influential in the ways of Washington. The trial court denied the request, but was alert to instruct the jury as to the non-evidentiary nature of opening statements and that it should not form opinions on the basis of them. It is also asserted that the trial was unfair because the prosecution lost no opportunity to refer to the parties and entertainments involved in appellant's expenses. The thrust of these arguments is essentially that appellant was tried, in substance if not in form, for some vaguely criminal offense of influence-peddling in addition to, or instead of, that of income tax evasion; and that determination of the latter charges must certainly have been affected by the former. The nature of appellant's own evidence was necessarily such, however, as to suggest that appellant's business activities were not of a wholly conventional nature; and we do not think the comments at the trial equated this with illegality. It was in appellant's interest to show large expense deductions, and he made the most of it. This could not help but paint the picture of a somewhat unusual

business activity. Thus, such difficulties as this may have caused appellant seem to us inherent in his situation when accused of tax fraud—an accusation which was first made in Missouri long before his activities in Washington began to be revealed there. We do not believe that the record contains reversible error because of the references now claimed to be prejudicial.[1]

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[1] Errors requiring a new trial are also asserted to reside in the trial court's rulings on the admissibility of evidence and its charges to the jury. In the case of the later, 15 specific instances of error are pressed upon us. In the case of most, if not all, of these claims, the particularity of the objection urged upon appeal was largely absent at the trial. Compare Rule 30, FED. R. CRIM. P., which requires appellate consideration of errors in the charge to be founded upon specificity in the objection made at trial. We have, in any event, examined the reasons given to us for the error in each case, and we see no need to reverse.

Similarly, the questioned rulings on evidence are, in our view, unavailing; and we note in particular only the one which appears to bulk largest in appellant's mind. This was the admission, over objection, of a brief filed with Internal Revenue Service by the Washington attorney representing appellant at the time the latter's affairs were under intensive consideration and when the Service was deciding whether to proceed against him criminally. Appellant's contentions with respect to this document seem to center upon a claim of inadmissibility because (1) the immateriality of possibly prejudicial matter in the brief far outweighed its probative value and (2) the brief was within the attorney-client privilege. As to the former, it is clear that the balancing judgment of the trial judge is what is involved, and we should reverse only if we can say that the balance unmistakably inclined the wrong way. We cannot say that it did. The central importance of the brief is that it shows the receipt of the unreported items of revenue. Its effort was to off-set these by items of expenditure—an effort which varied substantially from what was done at the trial. We think the trial judge was entitled to regard the materiality of this brief as unquestionable.

It seems clear from its face that the brief was not submitted solely as part of a negotiation over a settlement of civil liability, but as a last-chance effort to turn the tide against criminal prosecution. The frankness of its admissions is in this spirit. It is now claimed that the document was privileged, and could not be used

II

The theory of the Government's case against appellant is that, in respect of the years 1956-58, he received a total of $140,087.04 in income items which were not reported on his returns. Appellant's response to this, so it seems to us, is alternative in nature: He argues, first, that the Government failed to prove that these items were not reimbursements for expenditures made by him for the benefit of certain clients, involving no taxable gain to himself; and, secondly, that, even if the receipts did represent taxable income, he lacks the requisite criminal intent since he relied upon agents to prepare his returns from the information, assertedly complete, available to them. We examine these two points in their logical order, as just stated, and against the evidence of record relevant to each.

There is no significant dispute that appellant did receive some $140,000 more than he reported. This was made up of payments received from one individual and four companies. These last paid appellant other sums during the same period, which sums were shown on Forms W-2 or 1099[2] filed by the payors, and which were included in appellant's returns. Appellant's returns as filed listed substantial amounts of expense deductions, but there was in each case a balance of taxable income; thus, the expenses claimed did not absorb the receipts reported, much less those that were not.

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against appellant without his consent. But the basic element of consent is not here lacking. There is no claim that the brief was prepared and filed without appellant's knowledge or acquiescence; and, under these circumstances, there appears to be no forbidden breach of the attorney-client privilege. See *Banks* v. *United States*, 204 F.2d 666 (8th Cir. 1953), *vacated for reconsideration*, 348 U.S. 905, *aff'd.* 223 F.2d 884 (1955), *cert. denied*, 350 U.S. 986 (1956).

[2] Form W-2 is the form filed by the employer, reporting compensation paid under circumstances where withholding is necessary. Form 1099 is used to report sums paid where no withholding obligation attaches.

Appellant, a native of Missouri, was in the consulting and public relations business. In 1955 he set up a Missouri corporation in Joplin, known as Blyco Corp. It was organized for him by his long-standing friend and attorney, Ralph Baird. The corporation had space in Baird's Joplin law office, and Baird was one of the corporation's officers and stockholders. Although Blyco Corp. was apparently designed to be the vehicle for appellant's business operations, he continued to function independently and for his own account. The record does not disclose clearly why this was so. It only shows a considerable overlapping of his and Blyco's activities.

The way the unreported receipts in question came to appellant requires at least a summary of his relationships with the five payors:

1. *Darby.*

Mr. W. E. Darby, the head of a Little Rock insurance company, retained appellant in 1956 to find out why a registration statement was being delayed at the S.E.C. Darby said the agreement was to reimburse appellant for expenses, with no fee to be paid unless appellant gave satisfactory service. Appellant submitted three unitemized bills for expenses, and received three checks in payment therefor, totalling $7,770.50. Darby said he did not know how, or for whose benefit, the money was spent; and he filed no W-2 or 1099. The three checks were deposited in appellant's personal bank accounts.

2. *Jones Bros. Construction Co.*

The head of this Joplin company testified that appellant was retained in 1955 to pursue business contacts. For 1956-58, salary is shown as having been paid each year, and these amounts are reported. In each of the three years there were substantial expense reimbursements (1956—$10,160; 1957—$21,208.30; 1958—$30,000). Of these, only one—the 1957 total—was reported by appellant; and the record contains a letter written by him in March of 1958 to Jones, protesting the filing of a Form 1099 in

respect of this amount. Jones had no itemization of how these sums were spent, although it charged them to engineering services.

3. *M-P Construction Co.*

This Carthage, Missouri, contracting firm retained appellant to find some work it could bid on. Appellant asked for expense reimbursements from time to time, receiving payments of $10,500 in 1956, and $6,500 in 1957. The former was reported but the latter not. No itemization was obtained by the payor, and no Forms 1099 were issued. (the 1956 payment appears to be the one case in which appellant reported an income item on his tax return which had not been reported on a Form 1099).

4. *Howard Foundry Co.*

Appellant was retained in 1955 by this Chicago company at a weekly salary plus expenses. Appellant submitted vouchers for expenses from time to time, without itemization; and they were paid. The problem which engaged appellant's attention was a renegotiation matter which was eventually transferred, as the client apparently wished it to be, from the Justice Department to the Air Force. Some checks were made payable to appellant, others to hotels of his designation. No Forms 1099 were issued, although the salary payments were covered by Forms W-2.

5. *Aeronca Manufacturing Company.*

Appellant was hired by this company as a consultant with respect to (1) dealing with Government prime contractors and (2) Government procurement matters generally. Appellant was to be paid for his services, together with reimbursement for expenses. Total payments of $14,430 in 1957 were reported by appellant, but $26,000 received by appellant in 1958 was not shown in his return. No itemization in respect of this money was submitted by appellant, and no Forms 1099 were filed by the payor, assertedly through inadvertence.

For each of the years in question, appellant claimed, and was largely allowed, certain deductions on his return. These deductions appear similar to the transactions for which appellant was presumably being reimbursed by the payors just mentioned. Thus it is that appellant may fairly be taken to know that he needed to report these receipts and submit his own expense deductions to the Government by an appropriate deduction in his return. He appears not to have operated on the assumption that his payors' expenses, paid for by him with their funds, was a matter between them and the Government as to which he had no responsibility. Such an assumption is, of course, hardly compatible with appellant's failure to submit to the payors itemized explanations of the expenses for which reimbursement was assertedly being made.

The question would seem to be whether the Government is entitled to get to the jury on a showing of substantial unreported receipts of alleged expense reimbursements, when there is no explanation by either the payor or the payee of what use was made of the money. Here there is no issue as to whether appellant received the money. Neither is there any doubt that it was omitted from his income tax returns. It is now characterized as reimbursement of expenses, bu the fact and nature of those expenditures are not established. May the jury infer wilful evasion, within the meaning of the statute, from this evidence? We are not unmindful that this is a criminal case, and that the proof is to be weighed in an appropriately exacting balance. We think, however, that in this state of the record the jury could, if it chose, bring in a sustainable verdict of guilty.[3] There is that in the evidence which

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[3] Appellant contends that the Government bears the burden of proving that the unreported receipts constituted taxable income, or, phrased another way, that appellant was not entitled to any offsetting deductions. This argument has been rejected in numer-

could justify a conclusion that appellant wilfully followed a course of evading his income tax liabilities by arranging to receive large sums of money for which he did not account in any way. Where the Government was known to be on notice by means of W-2 or 1099 forms, there was reporting of sums received; and, where such notice did not exist, reporting was ordinarly withheld. This is a recognizable pattern which emerges from the Government's case, and which

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ous cases. *United States* v. *Bender*, 218 F.2d 869, 871 (7th Cir.) *cert. denied*, 349 U.S. 920 (1955), is typical.

> "The taxpayer's costs and other factors which would lessen his tax liability are peculiarly within his own knowledge. Accordingly, the law has placed upon him the burden of going forward with the evidence once the Government has established receipts in excess of those reported in his income return. . . .
>
> "This rule is grounded on the realization that it would be virtually impossible for the Government to show the negative fact that a taxpayer had no unreported deductions or exclusions. In such a case the Government, having shown unreported income, is aided by the presumption that the deductions and exclusions listed by a taxpayer in his return are all that exist."

See, *United States* v. *Shavin*, 320 F.2d 308, 311-12 (7th Cir.) *cert. denied*, 375 U.S. 944 (1963); *Dillon* v. *United States*, 218 F.2d 97, 99 (8th Cir.), *cert. granted*, 349 U.S. 914, *cert. dismissed*, 350 U.S. 906 (1955); *United States* v. *Stayback*, 212 F.2d 313, 317 (3d Cir. 1954), *cert. denied*, 348 U.S. 911 (1955); *United States* v. *Link*, 202 F.2d 592, 593 (3d Cir. 1953); *United States* v. *Hornstein*, 176 F.2d 217, 220 (7th Cir. 1949); See also *McClanahan* v. *United States*, 292 F.2d 630, 631-32 (5th Cir.), *cert. denied*, 368 U.S. 913 (1961); *Small* v. *United States*, 255 F.2d 604, 607 (1st Cir. 1958); *United States* v. *Lennon*, 246 F.2d 24, 27 (2d Cir.) *cert denied*, 355 U.S. 836 (1957); *United States* v. *Gannon*, 244 F.2d 541 (2d Cir. 1957); *Wolcher* v. *United States*, 233 F.2d 748, 751 n.4 (9th Cir.), *cert. denied*, 352 U.S. 839 (1956); *United States* v. *Smith*, 206 F.2d 905, 910 (3d Cir. 1953); *Graves* v. *United States*, 191 F.2d 579, 582 (10th Cir. 1951); *Barrow* v. *United States*, 171 F.2d 286 (5th Cir. 1948).

Of course, appellant was free to show that he was entitled to additional deducions which would offset the amounts received, see *Small* v. *United States, supra*, but this record will not support such a finding.

could have caused the jury reasonably to conclude that it constituted a conscious and knowing deception.

We turn now to appellant's defense that the most he was guilty of was hiring incompetent and unreliable agents to handle his income taxes—a lapse which may perhaps expose one to civil penalties for failure to pay the taxes properly owing, but not to criminal punishment.

The relationship between appellant and his associates, Ralph Baird and James Muskrat, is central to this issue. Baird, as has been said, was an old friend. He had served as appellant's attorney on various occasions since the beginning of his practice in 1938. When the appellant desired to establish his own public relations business in 1955, he used a room in Baird's Joplin, Missouri, law office as headquarters, most of appellant's time being spent travelling or in Washington. And, from this date, Baird played a prominent part in appellant's business, including the role already described in respect of Blyco Corp. He drafted contracts for appellant, as well as engaging in some travel and consultation work on his behalf.

At the direction of appellant, Baird obtained the services of an accountant, James Muskrat, to prepare appellant's personal tax returns. Muskrat prepared appellant's returns for the years in question and also prepared the Blyco Corp. returns for 1957 and 1958. Appellant's files, records, and bank statements were available to him. But Muskrat's instructions were indefinite, and the supervision exercised by appellant was sporadic. When Muskrat did not know how to handle a particular item, he would consult with Baird.

Appellant maintains that Baird and Muskrat possessed all the information necessary for preparing an accurate return and that he relied upon them to do so.[4] He testi-

[4] An investigator, retained in connection with the effort made by the attorney, Bernard, to avoid criminal proceedings, testified that his examination in 1961 of the files maintained in Joplin revealed evidence of all the unreported items.

fied that Baird was responsible for maintaining, assembling and keeping the records of his activities; that all records accumulated during his travels were sent to Baird; and that the entire accounting operation for both his own activities and those of Blyco Corp. were entrusted to Baird and Muskrat. He further testified that he kept Baird informed of all his receipts.[5]

If appellant did in fact account so fully to Baird, Muskrat was apparently unaware of it. He testified that he had no knowledge of most of the checks that were alleged to be unreported income, although he could not be sure that there was not, somewhere in the correspondence files, documentation of those receipts. Nor did the manner in which Muskrat prepared the appellant's returns reflect the existence of any regular method of accounting to the Joplin office.

For the 1956 return, Muskrat was given a listing of hotel expenses, W-2 forms, and bills. Appellant was present while the return was being prepared, and both appellant and Baird orally gave Muskrat information as to what was to go into the return. Appellant, although personally present and actively participating, did not advise Muskrat of any income except that shown on the return.

More time was spent in preparing the 1957 return, but again the procedures followed seem haphazard. Muskrat

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[5] "I sent him all checks, all the bank statements, and I sent him all the deposit slips. If I cashed a check some place I made a little note of it and sent it to him, or told him about it by phone. I tried to keep him fully abreast of all the things." The testimony of a public stenographer at a Washington hotel was offered in corroboration. She testified to mailing copies of letters, statements, and airplane tickets to Baird. She stated, "Nothing was ever withheld, held back from Mr. Baird. In fact, Mr. Black had instructed me many times to send copies to Mr. Baird." But she only worked for appellant intermittently, and did not know whether everything pertaining to the appellant's business was sent to Baird. A memorandum, in Baird's handwriting, noting the receipt by appellant of $800 from Howard Foundry, was also offered to corroborate appellant's story.

testified: "I carried on what I had started on the 1956 return, with no clear setting out of duties or instructions or anything. Just the ultimate result to accumulate the information for the tax return." His primary concern was obtaining a total on expenses; and, again, some expense information was obtained orally from both Baird and appellant. Muskrat wrote appellant, questioning him as to his income for 1957, but there is no indication that the letter was ever sent. In any event, Muskrat discussed Black's income with Baird, and the income used on the return was that reflected in either 1099 or W-2 forms.

That Muskrat was not receiving adequate information seems evident from his changed procedure in constructing the 1958 return. Because he was dissatisfied with the way previous returns had been put together and because appellant's business was expanding, Muskrat began, on his own initiative, to maintain books for the appellant.[6] These books contained an income account in which he entered all income items, as well as other unidentifiable deposits that were necessary to balance the books. He would ask Baird about the unidentifiable items, sometimes receiving an explanation. At the end of the year, income reflected on 1099 and W-2 forms exceeded the amount stated in the income account, so he did not attempt to reconcile the two, but merely used the income reflected on the forms in making up the return.

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[6] "A. I cannot recall when I commenced [sic] to do it. The situation came about partly because of the expanding scope of the operations of Mr. Black.

There were quite a few more companies involved during 1957 than there were in 1956. I was not satisfied with the manner in which I had put in [sic] 1956 or the 1957 return together. It was more or less a developing thing.

"Q. Mr. Muskrat, why were you not satisfied with the manner you put the '56 return together, or the '57 return?

"A. Well, I thought that things should have been kept a little more precisely than they had been for those two other years. However, those two years were gone."

Baird, on the other hand, showed a greater familiarity with appellant's affairs. He admitted knowing of most of the compensation arrangements appellant made with the five employers in question, but he denied knowledge of some particular receipts. As to the checks from W. E. Darby, Baird testified that he was satisfied from his own participation in the matter that the checks represented expenses incurred on behalf of Darby. Although he disclaimed knowing how much appellant had received, he testified that he knew of the arrangement with Jones Brothers Construction Co. He knew of appellant's relationship with the M-P Construction Co. And the arrangements with Howard Foundry and Aeronca were also familiar to him.

Baird insisted, however, that his responsibility was limited to accumulating expense information and that it did not extend to assembling appellant's income data.[7] But the record suggests otherwise. Whatever his precise responsibilities, he did engage to some extent in preparing income information for appellant's return. He advised Muskrat on the treatment of various receipts. On at least one occasion he wrote the appellant to obtain information about his receipts. Furthermore, since he was responsible for the Blyco Corp. tax returns, which included allocating income between the overlapping activities of appellant and Blyco, any failure by Baird to consider appellant's receipts seems improbable. There is correspondence between Baird and the appellant designating specific sources of income as belonging to the corporation. That letter, in March, 1958, clearly shows Baird's partici-

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[7] He later softened that assertion.

> "Q. Were you ever, during the time of the preparation of these returns, or at any time for the years 1956, 1957, and 1958 responsible for the collection of information pertaining to the income for the returns for Mr. Black?
> "A. I had some measure in it, but I didn't have the responsibility."

pation in the reporting of appellant's income. The letter concerned appellant's estimated declaration of taxes for 1958; in it, Baird reviewed appellant's income (based on certain assumptions) and outlined two methods for arriving at the estimated declaration. The inference is clear that Baird's participation with Muskrat in the preparation of appellant's tax returns was not limited to expenses. Rather, the conclusion suggested is that Baird was overseeing all of Muskrat's performance.

From this testimony, very little appears either to support or to refute appellant's testimony that information as to every receipt was passed to Baird in Joplin. Muskrat's testimony suggests that there was no such reporting, or at least that the manner of doing so was so disorganized as to have been of no assistance to him. Even the expense deductions, for example, could not be completed without obtaining information from the appellant. Baird, the central figure in this controversy, was not questioned about the adequacy of the information that he received from the appellant, although he did state that what he received was made available to Muskrat and that he did not know of many of the specific transactions that were unreported. That Baird did know generally of the appellant's compensation arrangements and did know that some of appellant's receipts were not reported on the tax returns, of course, does not necessarily mean that appellant told Baird of his receipts. Equally reasonable is the explanation that Baird acquired such information in the course of other duties on behalf of the appellant.

This raises critically the question of appellant's reliance on Baird and Muskrat. How is Baird's failure to ensure the accuracy of appellant's return, in light of his knowledge of the unreported receipts, to be understood? That he was negligent is belied by the fact that during this same period the accounting for Blyce proceeded in a more orderly fashion. Counsel for the appellant suggests that perhaps Baird's behavior can be

attributed to his self-interest in seeing that Blyco Corp. obtained the benefit of appellant's deductions. This allegation, however, is supported only by some evidence that the deductions on Blyco's returns increased in 1958 while those of appellant diminished. Furthermore, no glimmer of such behavior emerged from Muskrat's testimony, and he was preparing the returns for both parties.

For some reason, Baird did not think it necessary to report the receipts that were not reflected on 1099 forms.[8] Apparently, this was not a decision based upon Baird's understanding of the reporting requirements.[9] In any event, the inference seems reasonable that, in this matter, appellant placed something less than total reliance on Baird and that appellant was not unaware of the omission of substantial receipts from his tax returns.

The record below does not show appellant to be unconcerned with the preparation of his tax returns. To

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[8] It is not disputed that the unreported receipts were not shown on any W-2 or 1099 form. As to the income that was reported, Muskrat testified that he did not remember whether he saw 1099 forms in 1956, but that he did obtain some oral information from Baird or appellant and that he did have W-2 forms. He stated that he did not know where the income information for the 1957 returns came from if it was not from the 1099 forms. The 1958 return was clearly based on income shown on the forms. Muskrat said he used the forms because he was unable to reconcile the amount with the sum recorded in his books. Baird testified that Muskrat relied on the 1099 and W-2 forms in reporting the appellant's income for the years in question.

[9] Counsel for the appellant contends that Baird and Muskrat had good and sufficient reasons of their own for not including the unreported checks in the returns, and tried to show that the reason was Baird's understanding of the reporting requirements. Although Baird stated, in testimony that was later struck, that it was his understanding that such items need not be reported, he was positive in his testimony that he was not a tax lawyer and did not give appellant legal advice about his income tax.

the contrary, he personally participated to a considerable extent in their preparation. In 1956 he was present while the returns were prepared, assisting by examining his bank statements to locate deductible items. Other returns were not completed without obtaining his advice on various expense deductions. Appellant was well aware of the tax implications of his compensation arrangements, to the extent of demanding that the amounts paid him for expenses be not reflected on 1099 information returns because it would burden him with a higher tax.[10]

Nor does appellant's characterization of Baird as the person with complete responsibility for the financial aspects of his business appear strictly accurate. Expense checks were frequently mailed directly to the appellant, by-passing the Joplin office. Other checks, at appellant's request, were made payable to and sent directly to the hotels appellant was using. Often appellant would request additional money from his employers, and on at least one occasion he complained about delinquent payments. When this is added to his previously established concern that expense money be not reported on 1099 forms and his obvious awareness and control of the financial arrangements he made, the conclusion that appellant was quite the master of his own business seems thoroughly justified.

From this evidence, a jury could certainly infer that the accountant, Muskrat, did not have adequate information. Whether the appellant notified Baird of all of his receipts is perhaps less clear. The reporting to Baird occurred, if at all, in an informal manner, and its completeness is left very much in doubt by the record. Few indicia of any regular method of reporting are present. Checks and letters regularly by-passed the Joplin office.

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[10] On another occasion, appellant wrote Howard Foundry for payment requesting that it not be shown as income to him. Correspondence with Aeronca concerning appellant's compensation arrangement was explicitly concerned with a "better tax deal." Appellant's insistence on operating on a reimbursement of expense basis is further evidence of his tax consciousness.

The accountant who was supposed to have access to these materials gave credible testimony of never having seen the items. Indeed, the construction of the returns themselves suggest a lack of information.

Furthermore, it could reasonably be inferred that appellant, contrary to his own testimony, did not rely completely upon the judgment of Baird and Muskrat. Rather, he appeared to have considerable appreciation for the income tax implications of his activities. His correspondence with Baird suggests that Baird would not make such a decision without consulting appellant. Finally, appellant's participation in the preparation of the returns suggests that Baird and Muskrat did not possess the responsibility he attributed to them.

It may be that some or all of the unreported receipts were not retained by appellant for his personal benefit in the ordinary sense. One engaged in his business has perhaps to face some delicate problems of identification and characterization in the itemization of expenses. It may not be possible to serve both client and Commissioner at the same time. But if it is the latter who is sacrificed, that choice is no less knowing and wilful because of the harsh dilemma which occasions it. We think this record was such as to enable a jury to feel free of reasonable doubt in its conclusion that appellant made a wilful decision to ignore his responsibilities under the federal income tax law.

Affirmed.

WILBUR K. MILLER, *Senior Circuit Judge*, dissenting: The evidence introduced by the Government in an attempt to show understatement of income in Black's returns for the years in question was so cloudy, and proof of criminal intent on his part was so conspicuously absent, that I am unable to join the majority in affirming his conviction. I think the trial judge should have directed a verdict of acquittal.

Baird, who had long been Black's attorney, and Muskrat, his young and inexperienced accountant, prepared the returns, with very little, if any, participation by Black. Yet they were the principal witnesses against him, probably because, as Baird admitted, a special agent of the Intelligence Division of the Internal Revenue Service threatened him with criminal prosecution if he did not cooperate. Whether Muskrat was similarly threatened does not appear.

Black's files were kept in Baird's office in Joplin, Missouri, where he and Muskrat had full access to them. In preparing the returns, Muskrat selected from the files the materials he thought he would need, but in many instances he relied upon forms W-2 and 1099 without attempting to verify them by comparing them with information contained in the files. He admitted that he could not say the transactions about which he was questioned on direct examination were not represented by some documentation in the files.

Muskrat also testified that on form 1099 there were seven categories of payments to be listed by the payor, but there was no category for expense advancement or reimbursements. Obviously, the payor's inclusion of the latter two items in form 1099 would cause the form to reflect a greater sum than that paid by way of compensation only. Muskrat said when the 1099's and W-2's for 1958 totaled more income for Black than the books showed, he looked no further. If the total had been less, he said he "would have done some more checking." This is indicative of Muskrat's inexperience.

In spite of the possibly coerced cooperation of Black's two associates, the evidence permits, if it does not actually require, the conclusion that Black gave Baird, or the latter otherwise had, full information about his income, and that any understatement of income was due to the negligence of Baird and Muskrat. The record also rather definitely

shows, I think, not only that Black had no real part in the preparation of the returns and depended on his attorney and accountant, but also that he had at the beginning instructed them to prepare true and accurate returns.

For example, Muskrat testified that Black told him when he began his work that his affairs were complex, that he was seldom in Joplin to assist in preparing his returns, but wanted them to be as correct as possible. To that end, Muskrat said, Black asked him and Baird to go to Kansas City to consult the Internal Revenue Service to be sure they were preparing the returns correctly. The trip was never made because Baird decided not to go.

It is significant that Muskrat said Black never told him to omit any item of income from his tax return. He testified that he depended on Baird for information and that he saw Black only a few times. And Baird admitted he told Black the amount of his income and his estimated tax, thus showing the latter had no part in the preparation of the returns.

In the circumstances, I think it quite clear that the Government failed to show Black had knowledge of or participated in making any understatement of income for the years under consideration. If there was an understatement, Black is liable for the tax deficiency caused thereby; but he should not be punished criminally for the acts of his subordinates of which he knew nothing. Black was clothed with the presumption of innocence and, in my view, it was never dispelled by proof of guilt beyond a reasonable doubt. Absent evidence of any criminal act on Black's part, the jury should have been instructed to find him not guilty. *United States* v. *Pechenik*, 236 F. (2d) 844 (3rd Cir. 1956).

In any event, I am convinced that the trial court erred in denying a defense motion for a mistrial because of inflammatory newspaper articles which had just appeared. It is significant, I think, that the jury which had been allowed to separate until the motion for a mistrial was

made, was thereafter held together on the court's own motion. This indicates to me that the trial judge was disturbed by the articles in the papers. And well he might have been. I think the motion should have been granted. *Marshall* v. *United States*, 360 U. S. 310 (1959).

For these reasons, I dissent.

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PAGE

APPENDIX B

RICHARD WILSON

THE WASHINGTON EVENING STAR

The $10,000 Query to Baker

Enigmatic Question Needs Clearing Up To Forestall Doubts, Wrong Imputations

Senator Hugh Scott (Republican of Pennsylvania) directed the following question to Robert Baker, former secretary of the Senate Democratic majority:

"Mr. Baker, did not Mr. Fred Black give you $10,000 in cash in $100 bills in an envelope in the Carlton Hotel in Washington, these monies to be delivered to one of the presidential candidates for use in his campaign?"

No answer.

"Mr. Baker, did not he state at the time of the delivery of that $10,000 in cash in $100 bills—did not Mr. Black state to you at the time of delivery of said $10,000 in cash in $100 bills that $90,000 would be coming for the same purpose to aid the candidate in the 1960 election?"

No answer.

Robert Baker had one interest in the presidential campaign of 1960. He was working for the nomination of his boss and patron, Senator Lyndon Johnson, as the Democratic candidate for President.

Senator Scott's enigmatic questions were thus of special interest. No testimony has been offered that Baker's friend, Black, handed Baker the handy little packet of $100 bills. Black is the Washington representative of defense contractors who has testified that he had Caribbean gambling interests.

Cash money in copious quantities has, however, previously been associated with Baker. Testimony was given that he kept large sums of cash in a cabinet in his office in the Capitol where he served as Senator Johnson's lieutenant in operating the Senate. According to the testimony, Baker handled this cash familiarly, counting it out in sums up to $13,500, which he placed in envelopes and on one occasion accidentally counted out $1,000 too much.

The derivation of this cash is not established. What appears to be established—at least as an allegation—is that Baker was an associate of persons engaged in legal gambling operations. The most recent testimony on this point is that Baker arranged discussions on Caribbean gambling concessions for Las Vegas gamblers whom he described as "clients and friends."

Thus an unpleasant association of ideas has been set up, whether justified or not, and the senatorial investigating committee has been trying to get at the facts. Additional testimony is expected on the matter to which Senator Scott referred; that is, the question of the availability of $100,000 in cash "to be delivered to one of the presidential candidates for use in his campaign."

It is assumed, in fact it has never been denied, that Baker played some part in the collection of funds to aid Senators in their campaigns for re-election. There is nothing unusual nor necessarily irregular about this. Both parties have senatorial campaign committees which raise funds to help incumbents get re-elected.

But it has long been a matter of curiosity and concern where such funds come from, and how they are disbursed, whether strings are tied to their disbursement, and whether the giving or withholding of such sums may be used by the party leadership to enforce political regularity.

To this extent, therefore, the questioning of Baker on the $100,000 in cash has a true legislative purpose. It would be prudent for the Senate to consider whether or not additional legislation would be desirable to enforce strict

control over and accounting of such cash sums, or political contributions in any form, but particularly if in cash.

But entirely aside from that aspect, the whole matter raised by Senator Scott needs to be cleared up so that there will be no lingering doubts or wrongful imputations. A contribution of $100,000 in cash is quite a large sum, and very unusual, especially when its origin is in doubt.

This is a matter of more importance than the gift of a stereo set or the whereabouts of Nancy Carole Tyler at any given time. The mere fact that Baker refuses to testify on this and other points does not excuse the committee from finding out more about the questions raised by Senator Scott.

WASHINGTON POST Feb. 4, 1964

Vending Machine Figures Tied To Dulles Airport Hotel Project

By John P. McKenzie
Staff Reporter

Some present and former promoters of Serv-U Corp., the vending firm that lies at the center of the Robert G. Baker investigation, have turned up in the operations of a firm which is trying to build a new hotel at Dulles International Airport.

The hotel firm, International Airport Hotel System, Inc., has held since December, 1960, a contract to construct a soundproof, 240-room hotel at the Dulles terminal entrance.

For reasons unrelated to the Baker case, the hotel firm has run into difficulty financing the project and the Federal Aviation Agency, which operates Dulles, is pondering what to do if the hotel is not built by the deadline this fall.

Baker Quiz Witness

Executive vice president of the hotel firm is George H. Simon, who was a witness last week in the Senate Rules Committee's investigation of Baker, former Senate Majority Secretary who resigned after a dispute over Serv-U Corp. touched off a conflict-of-interest inquiry.

Simon testified that he and Jack B. Cooper of Miami were among a group of investors who put $91,000 in Serv-U, the vending machine concern in which Baker has been identified as a principal stockholder. Baker has not been linked to the Dulles project.

Cooper, who was convicted of tax evasion in 1961, is not an officer or stockholder of the airport hotel firm, but he is listed in a stock prospectus on file with the Securities and Exchange Commission as one of seven founders who "may be considered promoters of the company."

Gambling Figures Listed

Other investors in Serv-U included Edward Levinson, Las Vegas hotel and gambling figure, and Benny Sigelbaum, a Levinson associate, who also held stock in the hotel system until it went to the public with a stock issue three years ago.

Simon told the Senate Rules Committee that Levinson and Sigelbaum left the hotel company because the stock underwriters wanted the firm severed from any association with Las Vegas gambling interests.

He also told the Committee that he and Cooper sold out their interest in Serv-U three months after they bought in as the result of a meeting in Washington with Levinson, Baker, and aviation lobbyist Fred Black.

Thus Simon and Cooper quickly pulled out of Serv-U and Levinson and Sigelbaum are no longer shareholders in the hotel firm. But the interlocking relationships, which were disclosed by the Advance News Service of the Newhouse Publications, has aggravated a difficulty surrounding the hotel project.

The hotel system, which the FAA said submitted by far the best bid among seven major competitors, has invested $236,000 in the hotel's design, has yet to begin construction. Only in October did the firm and the FAA come to terms over design and the firm has reported new difficulties in the money market.

An FAA official said money lenders had declined to back the hotel until Dulles generated more traffic. The absence of currnt demand for the hotel, the official said, may be a mitigating factor when the FAA decides whether to enforce its contract rights promptly if the hotel is not built by autumn.

Maxwell M. Rabb, former secretary to the Eisenhower Administration cabinet and board chairman of the International Airport Hotel System, said yesterday he is confident that the firm can meet its Dulles commitment.

Rabb said the firm will be free to go all out for the Dulles project after the opening Feb. 28 of an 800-unit hotel at Los Angeles International Airport.

Tucker Says He Held Stock for Baker

Robert G. (Bobby) Baker's law associate has named the former Senate official and a North American Aviation Corp. "consultant" as original promoters of a vending machine firm with big contracts in California aerospace plants.

The disclosure was made by attorney Ernest C. Tucker in closed-door testimony released yesterday by the Senate Rules Committee.

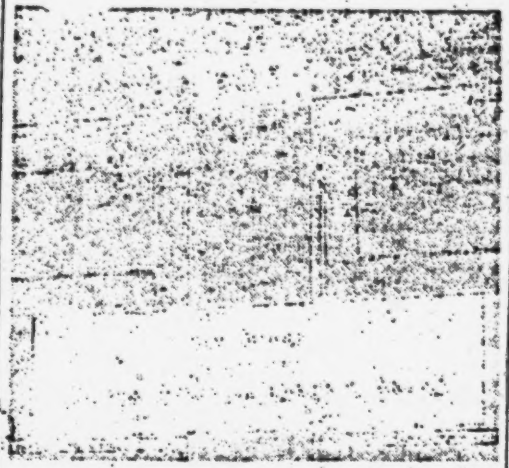
Tucker also testified that he served as trustee for the 57 per cent controlling stock owned by Baker and the consultant, Fred B. Black Jr., in the vending concern, Serv-U Corp.

Dollar a Share

He told investigating Senators that Baker and Black paid $1 a share for their Serv-U stock as "promoters of the company" but that Las Vegas gambling figures shortly afterwards bought into the firm at $16.52 a share.

Serv-U figures centrally in the Senate investigation into the Baker conflict-of-interest case and also in a civil suit filed against Baker and Black last September by a District vending machine operator.

The suit alleges that Baker and Black used their influence to break off a contract held by the Capitol Vending Co. at the Virginia plant of Melpar Inc., a North American subcontractor. Both men, together with Tucker, Serv-U's attorney, made a general denial of the accusation.



The Washington Post

Tucker, told investigating Senators that Baker and Black placed their stock in his name with "no paperwork" or receipts. "I guess I am just trustworthy," he explained, when questioned about the unusual arrangement.

Baker and Black, in answering the vending machine suit in Federal District Court here, denied the claim that they held stock in Serv-U.

The conflict was cleared up yesterday by Tucker's attorney, Nicholas J. Chase. He explained that, technically, Baker and Black did not hold stock in Serv-U since Tucker was the stockholder of record.

"I would think a good lawyer would answer the pleading technically. I try to do that," said Chase. He added: "I think that is why Christ called the Scribes hypocrites and why Shakespeare said we should be buried with the skulls."

Stock Price Base

After Baker and Black subscribed to the initial issue of stock at the "promoter's" price of $1 a share, said Tucker, additional stock was sold to Las Vegas gambling and hotel operator Edward Levinson and another Las Vegas man, B. Siegelbaum, at more than $16 a share.

The sales were three months apart, he told the Committee.

Under questioning by Sen. Carl T. Curtis (R-Neb.), Tucker said he could not pass judgment on whether or not Baker engaged in a conflict of interest through his dealings with Serv-U.

A large portion of Serv-U's $4 million a year in vending machine sales came from North American Aviation plants in California, according to previous witnesses. North American is one of the principal contractors for the National Aeronautics and Space Administration and the Defense Department.

Previous testimony from Serv-U's former president, Eugene A. Hancock, disclosed that Black made preliminary contacts with North American in California that culminated in a vending contract with Serv-U early in 1962.

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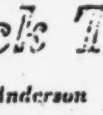
WASHINGTON POST - Feb. 2, 1964

The Washington Merry-Go-Round THE WASHINGTON POST Saturday, Feb. 1, 1964 B 39

Black Tells of Baker's Activities

By Jack Anderson

Senate investigators summoned Fred Black, the soft-spoken lobbyist for North American Aviation, to a closed session the other day to ask what he knows of Bobby Baker's alleged association with gamblers and call girls.



Anderson

Black acknowledged that he and Baker had participated in business ventures with gamblers Ed Levinson and Ed Torres of Las Vegas and Benny Sigelbaum of Miami; also that an alleged labor racketeer, Mike Singer, is on the payroll of Serv-U, a vending machine company in which they own a big stake.

Black also suggested that the wheeling-and-dealing Bobby Baker, now out of a job and out of influence, is broke.

"I have loaned him small amounts to eat on since this thing broke, about $1000," Black confided. "I think he is broke. I feel real sorry for him."

The lobbyist testified that George Simon of Miami, chief accountant for the International Hotel Chain, put up $30,000 to start Serv-U, and that Levinson, Torres and Sigelbaum had invested by personal check.

"Did you have anything to do with getting Levinson, Sigelbaum and Torres into the deal?" demanded Lennox McLendon, the cracker-barrel special counsel, who is running the Bobby Baker investigation for the Senate Rules Committee.

"No, I guess Simon got them in," said Black.

"Did you know that these people were gamblers and racketeers?" rasped McLendon.

"I go along as far as Levinson is concerned with gambling, but he is far from being a racketeer," retorted Black.

"He has quite an interesting background," suggested McLendon.

Gambling Man

"Well, I am a gambler at heart," said the lobbyist. "I shoot crap, play the horses, as you know. Being with gamblers gives me a kick. But, so far as I have been able to tell from the bankers, lawyers and utility people out in Vegas, Levinson has led an exemplary life since he has lived out there."

(For the record, Levinson owns Las Vegas's glittering Fremont Hotel, plus investments in other Nevada gambling emporiums. Torres runs the Fremont for him. Baker once tried to get horse race concessions in California and gambling concessions in the Dominican Republic for Levinson.)

"How long have you known Levinson?" asked McLendon.

"I have known Ed Levinson since the day before Jack Kennedy's inauguration," replied the lobbyist.

"Do you know how Baker met Levinson?"

"Yes," said Black. "We both met him in this building in a pre-inauguration party, the day before the big snow, at a party that was given by Sens. Bible and Cannon (of Nevada)."

Both Senators denied to this column that they had co-hosted any such party. But Bible's aides acknowledged that their records showed Levinson had dropped by the office during the Kennedy inaugural celebration.

"Do you know the labor racketeer Mike Singer?" asked McLendon. "Did you hire him?"

"No," said Black. "Bill Armstrong (Serv-U's president) must have hired him. I didn't know why they employed him, and I have asked why he is still on the payroll. They said he has a contract that hasn't run out, and as soon as it does run out, he will be fired."

"Do you know," asked McLendon, "whether Serv-U has paid Baker any money?"

"I knew you would ask me that," replied Black. "So I inquired and I was told no."

Bank Stock Deal

The paunchy, pleasant lobbyist also told how he had borrowed $175,000 from the Fidelity National Bank, controlled by the late Sen. Robert Kerr (D-Okla.) to buy 6400 shares of the Farmers and Merchants Bank. He has passed out 1600 shares apiece to Levinson and Sigelbaum, is still holding 1600 shares for Baker.

"How did all this come about?" demanded McLendon.

"If you want to bring a dead man into this," said Black, "Bob Kerr made the loan possible. He thought this was a good deal and suggested I buy the stock."

"How did Baker get into this?" persisted the counsel.

"Bob Kerr suggested that Baker be in it as a one-half owner," replied Black. "You know the relationship between Bob Kerr and Bobby Baker. It was the closest relationship you can think of except for father and son."

When the canny Senate counsel brought up the question of call girls, Black begged off.

"I don't think Baker had any interest in call girls or any other girls," the lobbyist said.

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WASHINGTON DAILY NEWS - 1/29/64

Ammunition for Bobby Baker

Hotel Offer Is Called a 'Dummy'

Mrs. Gertrude C. Novak told the Senate Rules Committee yesterday she wished she'd known about an offer of $1.5 million by Dallas tycoon Robert F. Thompson for the Carousel Motel she and her brother-in-law owned with former Senate Majority Secretary Robert G. (Bobby) Baker.

Mr. Thompson, an official of the Tecon Corp.—the huge construction firm owned by the Murchison family of Texas—said his offer was made four months before Mr. Baker, in effect, sold the motel to himself and his associates in the controversial Serv-U Vending Co. for just over $1 million.

NOTE

Mrs. Novak was left holding a non-negotiable, non-transferrable promissory note from Serv-U for her minority share in the motel, a note which is secondary to one held by Mr. Baker and his wife.

Committee special counsel L. P. McLendon accused Mr Thompson of writing the purchase proposal "at Bobby Baker's request so he could use it to impress other people?"

Mr. Thompson, who is a co-owner of the Dallas Cowboys professional football team, denied this.

MRS. NOVAK

He said he's still willing to offer $1.5 million for the motel and would consider it a better investment now than when he made his original offer on Nov. 15, 1962.

He may get his chance.

MAX KARL

ALBERT YOUNG

WILL SELL

Mrs. Novak told The Washington Daily News today that Mr. Baker told her nine days ago that he and Serv-U were now willing to sell the motel for exactly $1.5 million to any buyer. "He said he wanted dollar for dollar—$1.5 million," Mrs. Novak said.

Mr. McLendon told reporters after yesterday's hearing that he considered the Tecon purchase proposal a dummy—designed to give Mr. Baker ammunition with which to convince his Serv-U partners that their vending firm would be making a good buy.

In other testimony yesterday on Mr. Baker's business empire, George M. Simon, a Miami Beach accountant and associate of Miami Beach investor Jack Cooper said:

Washington Daily News 1/29/64 (continued)

He and Mr. Cooper and a few other personal friends put up $91,000 late in 1961 to get the fledgling vending operation off the ground but were bought out three months later by the principals.

IDENTITY

He identified them as Mr. Baker, his law partner Ernest C. Tucker, wealthy Black-American Aviation Corp. Washington contact man Fred Black Jr., and Edward Levinson and Benny Siegelbaum, men with Las Vegas gambling connections.

He said an underwriting firm that handled the first public stock issue of a hotel construction firm he and Mr. Cooper operated insisted that Messrs. Levinson and Siegelbaum be bought out of the firm because "they didn't want anyone with Las Vegas gambling interests" in a publically held company.

He told of a trip Mr. Cooper, Mr. Baker and Mr. Levinson made to the Dominican Republic early in 1963 to look over hotel property — presumably because gambling is legal there.

Mr. Simon said he wasn't aware that, when he and Mr. Cooper got out of Serv-U in March of 1962, that Mr. Baker said Mr. Black owned 57 percent of the company.

But, he said, he'd been told that Serv-U had "a good chance" to land North American's vending contracts because of Mr. Black's connection with the company.

RAPID RISE

Serv-U's sudden and rapid rise to prominence in the vending industry began about the same date and it subsequently got contracts with West Coast defense manufacturers worth an estimated $3.5 million yearly.

In another facet of yesterday's hearings, Committee Counsel McLendon bristled when reporters asked him repeatedly if the Committee planned to call Presidential aide Walter Jenkins to testify.

Mr. Jenkins has stated in an affidavit that he knew nothing about the now-famous advertising time bought on Mrs. Lyndon B. Johnson's Austin, Tex., television station by a Silver Spring insurance man who got President Johnson's life insurance business in 1957.

The insurance man, Don B. Reynolds, and Albert Young, president of the firm that used the advertising time, have both said they dealt with Mr. Jenkins.

ADVERTISING

Mr. Reynolds told the Committee he agreed to buy the advertising time—$1500 worth—at the "suggestion" of Mr. Jenkins.

Republican National Chairman William Miller, meanwhile, called for an investigation to determine whether either Mr. Reynolds or Mr. Jenkins had been lying about the advertising.

He said their statements indicate "a clear case of possible perjury."

Sen. Carl T. Curtis (R., Neb.), today echoed the request.

Rules Committee chairman B. Everett Jordan (D., N.C.) last week kicked up a storm of partisan hoots when he told reporters he wouldn't call Mr. Young, president of Mid Atlantic Stainless Steel Co., because "we're not investigating tinware." The company sells a line of cookware, china, crystal and flatware.

But yesterday, committee investigators questioned Mr. Young at length on documents relating to the television advertising he turned over to Sen. John J. Williams (R., Del.), who sparked the Baker probe last fall and is considered the committee's watchdog in the case.

Sorensen and JFK: New mission

ber address to Congress, the talk to the U.N., the State of the Union Message. The President huddled with his special counsel the day his resignation was announced, urging him to reconsider.

"I felt a duty to get the new President started into 1964 along the Kennedy path," Sorensen explains. "I also felt I had a book to write that no one else could write. I thought that book ought to be written."

Certainly, no one is more qualified for the assignment. In his eleven-year association with Mr. Kennedy, Sorensen, now 35, had been idea man, wordsmith, sounding board, trouble shooter, confidant, comforter: JFK's alter ego.

Opposites Attract: It was an unlikely meeting of the minds. Their backgrounds could not have been more disparate: Kennedy, the son of a Boston millionaire, an Irish Catholic educated at posh prep schools and Harvard; Sorensen, the son of a successful Populist Republican Nebraska politician, a Unitarian who went to public schools and the University of Nebraska. When Sorensen signed on, the handsome young senator from Massachusetts was a conservative Democrat who had voted against Harry Truman on foreign aid and other issues. His new lieutenant was a certified, militant liberal, active in Americans for Democratic Action. Yet they shared a bond—pragmatism—and an intellectual kinship that helped produce historic results.

At the beginning of the Kennedy Administration, Sorensen's sphere was domestic affairs. But after the Bay of Pigs debacle, the President brought him into the circle that dealt with every new challenge from Berlin to the Cuban missile facedown to the Ole Miss riots. Their rapport grew so close that a nod or a phrase served to convey a complex idea; Sorensen could unerringly predict his chief's attitude on a given problem, even adopted the President's celebrated rhythms of speech and pronunciations—"vi-gah" and "Cu-ber"—for his own.

A dozen publishers, magazines, and newspapers are clamoring for the rights to Sorensen's assessment of John Kennedy and the history they made together. The book, he says, will puncture several misconceptions about JFK. "The most insidious of these," says Sorensen, "is the myth that Kennedy's cool, analytical manner meant that he had no heart, that he didn't commit his heart, that he didn't feel passionately about issues. This just wasn't true."

It will take six months to a year, Sorensen calculates, to get it all down. Beyond the book—despite speculation that he might return to Nebraska to run for the Senate—he has no plans. At the White House, he wore so many hats so adeptly that it will require the full-time efforts of a clutch of staffers to approach doing for Lyndon Johnson what Sorensen did so well for John F. Kennedy.

INVESTIGATIONS:

Give-and-Take

Great chunks of the Bobby Baker financial jigsaw puzzle fell out of the realm of innuendo and into the public record last week. More pieces turned up, in fact, than Senate Rules Committee investigators bargained for, and some new ones—touching Lyndon B. Johnson—were about to come. The pattern that emerged pictured Baker as a high-powered hawker of influence whose business cronies ranged from shadowy gamblers to the Senate hierarchy's third-ranking Democrat, Florida's dapper George Smathers.

During the hearing, Nebraska's Sen. Carl T. Curtis was so taken with vending-machine operator Ralph Hill's story of Baker's wheeling-and-dealing tactics that he was moved to murmur: "So Mr. Baker gave and Mr. Baker took away . . ." What Bobby Baker gave and took, said Hill, former president of Capitol Vending Co., was Capitol's lucrative vending contract with Melpar, Inc., a defense subcontractor.

When Baker closed the deal putting Capitol's machines in Melpar's plants, Hill testified, "I thought as a token of my appreciation I'd offer him a case of whisky. I never had the opportunity."

According to Hill's testimony, Baker demanded money—$1,000 a month—but by offering cash, he got Baker to agree to accept $250 instead. Then, said Hill, Baker got Melpar to double the price of soft drinks, and renewed his demand: "Now do I get my $1,000 a month?" Hill said they settled on $650, and he paid Baker $5,000 in all.

The payments ended, said Hill, when Baker abruptly announced he was throwing the Melpar business to another firm, Serv-U Corp., in which he held substantial stock. Hill testified he then warned Baker's secretary, Carole Tyler, that he planned to sue her boss and asked her to use her "tremendous influence" to have Baker change his mind. If Baker thought Hill was bluffing, he was wrong, and the publicized details of the suit finally led to his resignation.

A Phone Calls When West Virginia's Sen. Robert C. Byrd sharply inquired how Hill knew Baker actually used his influence as a lever to gain contracts, the witness said smoothly: "I heard Mr. Baker make a call to you, sir . . . concerning vending machines in the Senate." Byrd looked as if he had been slapped. He then acknowledged that Baker had indeed phoned him—as chairman of the Rules Committee's restaurant subcommittee—but he pointed out that the Baker-Hill bid was rejected.

Another revelation by the Senate investigators was that Baker co-signed a $175,000 note on the late Sen. Robert S. Kerr's Oklahoma City bank—along with Fred Black, Washington lobbyist for North American Aviation Corp., and two gamblers, Edward Levinson of Las Vegas and B.B. Sigelbaum of Miami. Levinson and Sigelbaum also owned stock in Serv-U, it was revealed, and a former official of the company said the firm negotiated for an $800,000 contract with North American while Serv-U was still a paper corporation.

Last week's biggest splash involved Senator Smathers, a Baker booster whose photographs with the former majority secretary (as in The Pickens [S.C.] Sentinel) have suddenly become collectors' items. The senator's name was dropped almost casually by Baker's mild-

oodwill Supper Attracts 600

Baker, Smathers: No impropriety

mannered tax accountant, Milton Hauft.

When Nebraska's Carl Curtis routinely asked whether Hauft knew of any Baker business ventures with Senate employes, Hauft piped up: "With Mr. Smathers and Mr. Peek." George Smathers quickly issued an explanatory statement. He had sold Baker and Scott Peek, his then administrative aide, each a one-eighth interest (at $1,500) in his share of a Florida land deal near Cape Canaveral. The reason: Baker and Peek were both "trying to raise a large family on a limited income." Fortunately, added Smathers, "the transaction did turn out successfully and each of them has received a return of slightly over $1,000 a year on his investment over the past seven years."

Challenged Buttonholed by a St. Petersburg Times reporter who asked about his real-estate deals, Smathers snapped heatedly: "When your publisher [Nelson Poynter] discloses his landholdings, I'll disclose mine." Poynter promptly printed his holdings and called for Smathers to do the same. At the weekend Smathers had yet to do so.

Hardly any one in Washington expected the committee to dig into the Baker-Smathers relationship. Indeed, chairman Everett Jordan announced "there was nothing improper whatever" about the real-estate deal. Earlier, when asked if Smathers would be called to testify, Jordan countered: "We're not investigating senators."

This week the committee plans to release secret testimony of a former Baker business associate, insurance man Don B. Reynolds. According to Reynolds, he arranged for $200,000 in life-insurance policies for Lyndon Johnson after his heart attack in 1955. Later, Reynolds testified, he purchased $1,200 worth of advertising time on KTBC-TV, the Johnson family's station in Austin—though his office is in Silver Spring, Md. The decision to release the transcript was on a 6-3 vote. It was opposed by the three Republican committee members who vainly urged that Reynolds be questioned in open hearings. One disgruntled minority member complained: "They are afraid to let him testify in public."

POLITICS:

Into Orbit

John Glenn Jr. finally ended his longest countdown last week.

From a press-conference pad in the grand ballroom of the New House in Columbus, Ohio, the first American to orbit the earth rocketed into the race for the U.S. Senate as a Democratic candidate. It was the poorest kept secret since millions of televiewers saw Glenn, a Marine Corps lieutenant colonel who will be 48 in July, splash into the Atlantic Ocean after his three-orbit flight on Feb. 20, 1962.

Glenn tipped off the long-expected announcement a day earlier when he resigned from the space program. (Eventually, he must resign or, on his 22 years of service, retire from the Marines.) Glenn's friendship with Attorney General Robert F. Kennedy and frequent visits to the Kennedys at Cape Cod had long signaled an entry into Democratic politics.

Asked if he wasn't turning name and fame gained as an astronaut to personal gain, Glenn flashed the familiar boyish grin, and said: "My father has been in the plumbing business in New Concord [Ohio] for many years . . . That's where I got my good name.

"Some others," Glenn said, "got their names known from a different source." This was a dig at the Republican candidate, Robert Taft Jr. But before meeting Taft in November—assuming Taft beats Ted Brown, Ohio's Secretary of State, in the primary—Glenn must contest incumbent 74-year-old Sen. Stephen Young in the Democratic primary.

And Young was undaunted by Glenn's fame. "I expect to be elected," he said. "I can do more for Ohio than any of my opponents, Democratic or Republican."

Glenn's action, nonetheless, disconcerted NASA. ". . . We want him off our hands fast," declared a spokesman. And Ohio's Democratic Rep. Charles A. Vanik grumbled, "The high office of U.S. senator . . . should not be a hero's pawn."

The Glenns: Three, two, one . . . run

Barry's War

The Administration's proposed war on poverty prompted a counterattack last week from Arizona's Sen. Barry Goldwater. In fact, the senator's blast before the black-tie diners of Manhattan's Economic Club sounded remarkably like an "all-out" attack on the nation's poverty stricken.

Not only did he complain of fraud in relief payments and urge that all able-bodied recipients be put to work on public projects, but in a section of the prepared speech omitted for lack of time, the Republican Presidential aspirant expressed doubt education would help many of the poor. "We are told . . ." his address read, "that many people lack skills and cannot find jobs because they did not have an education. That's like saying that people have big feet because they wear big shoes. The fact is that most people who have no skill have no education for the same reason—low intelligence or low ambition."

Although Goldwater was aiming at what he called "the Fast Deal" and "Santa Claus promises" of President Johnson, New York's Gov. Nelson Rockefeller, a rival for the GOP nomination, was the first to fire back. He told students at New Hampshire's Keene Teachers College he was "diametrically opposed" to Goldwater's views. "A lot of people who are without jobs," he said, "are not stupid or indolent but have been denied economic and educational opportunities. The South has not furnished economic and educational opportunities to its largest minority group . . . Some Southern leaders, including Senator Goldwater, are restricted by a lack of understanding."

Hood? Rockefeller, hatless in the snow, made his remarks in an exchange with a student, who charged: "You are a Robin Hood in a gray flannel suit." "No," the governor replied, "I don't take money from the rich."

Meanwhile, another of the Arizona senator's outbursts was still reverberating around Washington. Mississippi Democratic Sen. John C. Stennis, chairman of the Preparedness subcommittee, announced that he intended to look into Goldwater's charge—angrily denied by Defense Secretary McNamara—that the nation's intercontinental ballistic missiles are undependable.

Both the governor and the senator while presently debating at long range added to the list of state primaries that they will contest on the spot. Rockefeller prepared to enter the West Virginia primary May 12, putting his total at four; Goldwater was to enter a fifth Nebraska, on May 12. With the first test of strength, New Hampshire, only seven weeks off, the debate seemed likely to grow even sharper.

Newsweek

Washington Star 1/29/64

Senators to Question Baker Law Partner On Free-Wheeling Financial Deals

By PAUL HOPE
Star Staff Writer

The Senate Rules Committee is preparing to question Robert G. (Bobby) Baker's law partner tomorrow as the free-wheeling financial dealings of the former secretary of the Senate Democratic majority continue to unfold.

Committee Counsel L. P. McLendon said the law partner, Ernest Tucker, will be interrogated in closed session. He said that another Baker associate, Fred Black, Washington representative for North American Aviation, also will be questioned in private on Monday.

Mr. Tucker and Mr. Black are central figures in previous testimony concerning activities of Serv-U Corp., a vending firm in which Mr. Baker listed a $1 million interest last year. A suit by a rival firm against Serv-U led to the inquiry into Mr. Baker's private financial affairs.

The announcement that Mr. Tucker and Mr. Black will be called to testify followed a public session yesterday in which the Rules Committee delved into some of Mr. Baker's relationships with Mortgage Guaranty Investment Corp. of Milwaukee and the Murchison financial empire of Texas.

MAX H. KARL

ROBERT F. THOMPSON
—AP Photos—

Miller Demands Inquiry

In another development, Republican National Chairman William E. Miller demanded that the Rules Committee go into what he called a "clear case of possible perjury" in testimony already given in the Baker inquiry.

Mr. Miller referred to a contradiction between a statement by White House Aide Walter Jenkins and Don B. Reynolds, a Silver Spring insurance man, over television time Mr. Reynolds said he was persuaded to buy on the LBJ Co.'s Austin station.

Mr. Reynolds has testified he bought $1,208 worth of advertising after he was allowed to write a $100,000 policy on President Johnson's life in 1957. He said the suggestion he buy the time came from Mr. Jenkins, but Mr. Jenkins has denied any knowledge of it.

Representative Halleck, House Republican leader, joined Mr. Miller's demand for a closer look into the advertising on the Johnson family station. He said that "if the American people don't get a complete exposure from the committee, then it certainly will be an issue in the election."

$360,000 Loan to Buy Stock

At yesterday's hearing, Robert P. Thompson, executive vice president of the Murchisons' Tecon Corp. of Dallas, testified he arranged $360,000 in loans from a Texas bank for him and Mr. Baker to buy stock in Mortgage Guaranty Insurance Corp., a firm that has figured heavily in the Baker investigation.

Mr. Thompson also said he and Mr. Baker once bought some stock together in Investors Diversified Services, a big investment company of Minneapolis. The Murchison family gained control of IDS when it wrested the Alleghany Corp. from financier Allan Kirby in 1961. Last year Mr. Kirby gained control of Alleghany, a multi-billion-dollar holding company.

Mr. Thompson said he met Mr. Baker five or six years ago and while he wasn't sure where, it may have been in "Lyndon Johnson's office." At

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that time, Mr. Johnson was Senate Democratic leader.

Mr. Thompson said he has had many social contacts with Mr. Baker since then and told of one visit of several days he made with Mr. Baker to the Spanish Quay, an island owned by the Murchisons in the Bahamas.

He also said he offered, on behalf of the Tecon Corp., to buy for $1.5 million the Carousel Motel, a plush seaside hostelry built at Ocean City, Md., by Mr. Baker and some Maryland partners. The motel was sold to Serv-U Corp. at a lower price, and there was no explanation of why the Tecon offer was turned down.

It was suggested during questioning of Mr. Thompson that the letter containing the Tecon offer may have been solicited by Mr. Baker as a device to use the prestige of the Murchison company in negotiating the sale of the Carousel with other parties. But Mr. Thompson denied this, and said his offer was a "bona fide" one.

Mrs. Novak Surprised

Disclosure of the Tecon offer came as a surprise to Mrs. Gertrude Novak, widow of one of Mr. Baker's partners in the Carousel construction. Called to the stand after the Thompson testimony, Mrs. Novak said Mr. Baker had never mentioned the Thompson offer to her and indicated she would have jumped at it had she known about it.

"We were looking for buyers," she said, adding that Mr. Baker appeared anxious to get out of the Carousel even if he got back nothing more than his investment.

When the Carousel was sold in February 1963 to Mr. Baker's Serv-U Corp. Mrs. Novak wound up with a non-negotiable promissory note for her share, a note which she can't collect on for 20 years.

Free-and-Easy Arrangement

Mr. Thompson indicated his business relationship with Mr. Baker was governed largely by the free and easy arrangement which he described as a "Texas agreement" in which a man's word is considered as good as a written contract.

He recalled that the first loan he arranged for purchase of MGIC stock in December 1960 was signed only by himself but there was no question that Mr. Baker was responsible for half of it because they had a gentleman's agreement.

The first loan was for $110,000 and was made by a phone call from the Hay Adams Hotel in Washington to the First National Bank of Dallas. Mr. Thompson said Mr. Baker had suggested they buy some MGIC stock because he (Baker) thought it was a good deal.

Mr. Thompson said he got the president of the Dallas bank on the line, put Mr. Baker on for a moment to introduce him, and got approval for the $110,000 loan immediately.

New Loan for $250,000

It turned out that only $84,000 worth of stock—2,000 shares—of stock was available at that time, so they turned back the rest of the money to the bank.

But he testified that again in October, 1961, he arranged another $250,000 loan from the same bank for him and Mr. Baker to buy some more stock, this time 9,000 shares. Of this, 7,000 shares were issued to Mr. Thompson and 2,000 in the names of four other persons, one of them being Thomas D. Webb, Washington representative of the Murchisons.

Another of the four was Ken Curtis, whom Mr. Thompson described as a television actor who replaced Chester on the program Gunsmoke.

The other two were Francis Law, who shares an office with Mr. Webb in Washington, and Robert Comstock, who was not further identified.

Mr. Thompson said he had a "Texas agreement" with these four, too, under which they would profit through the use of their names if the stock went up, but he (Thompson) would stand any loss.

He said he and Mr. Baker sold 3,500 shares at a profit of $9,000 each. But he said that since the value of the stock has gone down recently, he and Mr. Baker would take a loss of several thousand dollars overall if they were to dispose of the remaining stock now.

Mr. Thompson said he and Mr. Baker bought $111,000 worth of Investors Diversified stock in April, 1961, about the time the Murchisons took control of Alleghany Corp. He said they sold the stock in October, 1961, at a profit of $13,082 each.

Query Role of Webb

Committee Counsel McLendon questioned Mr. Thompson closely about Mr. Webb's role in the Murchison operation. Mr. Thompson described him as the "bird dog" for Tecon for finding out "what's coming up in construction."

He said Tecon does about $75 million to $90 million a year business in heavy construction, much of which is done under Federal contract for the Army Corps of Engineers. He said Mr. Webb has nothing to do with

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...ssiting Government contracts for Tecon.

Previous testimony has connected Mr. Webb with other Baker business ventures, including a Florida real estate deal financed by a loan from the Teamsters Union. Mr. Reynolds, who also was involved in the Florida venture, said Mr. Webb arranged the Teamster loan.

Baker One of Biggest Holders

Another witness, Max Karl, president of MGIC, testified that Mr. Baker is one of the largest stockholders in MGIC. Testimony showed that Mr. Baker first bought into the company in August 1959, just before a public stock offering was to be made and just a few months before the Government was to issue a favorable tax ruling for MGIC.

Mr. Karl denied that Mr. Baker ever helped the firm in any legislative matters or in obtaining the tax ruling.

The tax ruling was obtained largely through the efforts of Representative John W. Byrnes, Republican of Wisconsin, who is the senior G. O. P. member on the tax-writing House Ways and Means Committee. Mr. Karl said that no inducement was given to Mr. Byrnes for his help on the tax matter and that a later purchase of stock in MGIC by Mr. Byrnes had nothing to do with the tax matter.

After publicity about his MGIC holdings, Mr. Byrnes sold his stock and gave the profits to a Wisconsin scholarship fund.

Much of Mr. Baker's investment in MGIC was made at a bargain-basement price of $1.50 a share, the testimony indicated. On a financial statement filed by Mr. Baker in February 1963 he listed some 15,000 shares of MGIC which he valued at more than $450,000.

Mr. Karl testified that Mr. Baker now holds 9,274 shares in his own name. The remainder of the shares he claimed on the February 1963 financial statement apparently represent his portion of the stock bought by Mr. Thompson.

Don't Know Bursten

Both Mr. Karl and Mr. Thompson testified they do not know a Leonard Bursten. Mr. Reynolds testified earlier that Mr. Bursten told him at a Murchison party in Florida that he was instrumental in getting MGIC started.

Mr. Reynolds also testified that he, Mr. Webb and Mr. Bursten discussed MGIC with Representative Multer, Democrat of New York. Mr. Karl said Mr. Bursten has never had anything to do with MGIC affairs and he knew nothing of any such meeting with Mr. Multer.

A Miami Beach resident, George M. Simon, one of the original investors in Serv-U Corp., also testified yesterday. He said he was brought into it through Jack Cooper, another Florida man with whom he has business interests.

Mr. Simon said Mr. Cooper was approached to invest in Serv-U by Edward Levinson, a Las Vegas hotel and gambling casino owner, who has been identified as one of the Serv-U stockholders.

Mr. Simon, who said he is a member of an airport-hotel building company, testified he and Mr. Cooper put $91,000 into Serv-U but gave up their interest for $100,000 after Mr. Baker and other involved wanted to buy them out.

Mr. Simon testified that Mr. Baker, Mr. Cooper and Mr. Levinson went to the Dominican Republic last April to look over the possibility of going into a hotel operation there.

He identified Mr. Cooper as the negotiator of a sale of American-built fighter planes to the Trujillo Government of the Dominican Republic in the early 1950s. He said the planes were bought from Sweden.

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Investment Without Cash

Probe Told of Baker's Get-Rich-Quick Deals

By Laurence Stern
Staff Reporter

Senate investigators yesterday looked into Robert G. (Bobby) Baker's magical profits in a firm called MAGIC and his no-cash-down investment deals with a partner in the Murchison financial empire.

They also heard testimony that Baker flew to the Dominican Republic last year with a Las Vegas gambling figure and a Miami dog track owner associated with Dictator Rafael Trujillo. The trip was made to survey hotel investment properties.

The most magical in yesterday's dazzling array of transactions was one in which—thanks to lucky timing and a favorable tax ruling—Baker turned a $28,750 investment into stock valued at $430,000 during a 18-month period.

Baker invested the money in the Mortgage Guaranty Insurance Corp. of Milwaukee in August, 1958. By the end of the following year—two stock-splits and one favorable tax ruling later—value increased 15-fold.

Republicans attack Democrats on a broad front with GOP Chairman William E. Miller also calling for an investigation of "possible perjury" in the Baker case. Page A6.

The story was related to the Senate Rules Committee in public testimony yesterday by MGIC (or more familiarly,

See BAKER, A8, Col. 5

MAGIC) president Max H. Karl.

Karl told investigating Senators that when he first met Baker in early 1959 "I was impressed with the title he bore. I felt MGIC should have prominent stockholders . . . I thought he (Baker) knew a lot of people."

Baker in turn was evidently impressed with the insurance firm's earning prospects, Karl said, because the former Senate aide sent a check for $28,750 to the firm's Milwaukee office and bought 250 shares of stock.

MAGIC insures residential mortgages granted by Federally-regulated savings and loan associations. It is also in competition with Federal mortgage insurance programs.

Baker's initial acquisition of stock was both in his own name and in the names of Capitol Hill friends and business associates. Karl acknowledged that there was "some question of the legality" of the sales to Baker since the firm was licensed at the time to sell its stock only within Wisconsin.

Nonetheless, 11 days after Baker's purchase of the block of stock, on Aug. 21, 1959, the firm's stock split 8 for 1. The following year it split again 10 for 1. Market prices began to soar after the first split and rose even more sharply after the second one.

In the intervening months, with the help of Rep. John W. Byrnes (R-Wis.), Karl's firm obtained a crucial ruling from the Treasury Department allowing it to defer payment of taxes on a special reserve. Before appealing to his home state Congressman, Karl's request for the tax ruling had been denied twice by the Internal Revenue Service.

Karl told the Senate panel that he based all projections of the firm's growth on the favorable ruling from the Internal Revenue Service. "I thought we were going to get it," he said.

Praise for Byrnes

Byrnes, so far the only Republican in Congress to be brushed by the Baker case, was praised during yesterday's questioning session by the Rules Committee's ranking Republican member, Sen. Carl T. Curtis of Nebraska. "I have a very high regard for Congressman John Byrnes," said Curtis.

It had previously been disclosed that Byrnes made a $27,000 paper profit on MAGIC stock he bought several months after his intercession for the company. However the Wisconsin Republican turned over his stock to a charitable scholarship fund which kept the profits and returned his $2300 investment.

Karl also testified that he made a $18,000 loan for Baker from a friend in the banking business. When investigating Senators expressed their puzzlement at this favor to the former Senate aide, Karl explained that "I try to be accommodating."

"Exclusive Treatment"

The committee released a "Dear Bobby" letter Karl sent Baker last February in which he said Congress should afford MAGIC the same "exclusive treatment in the law" that is extended to Federal Housing Administration and GI mortgage insurance programs.

Karl also wrote Baker that he found Sen. John Sparkman (D-Ala.) and Rep. Wright Patman (D-Texas), chairman of the House Banking and Currency Committee, sympathetic to "private capital's approach to insuring mortgages . . ."

He went on to tell Baker that "you undoubtedly know many Congressional leaders

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who share the same views."

The insurance executive further acknowledged to the Committee that Baker owns one of the biggest aggregations of MAGIC stock, except for the firm's promoters and insiders.

Current holdings in Baker's own name, said Karl, total 8274 shares worth about $217,000. In a 1963 financial statement Baker reported holdings in MAGIC stock which he valued at nearly $700,000.

Testimony on how Baker persuaded a partner in the Murchison dynasty to make sizable investments in MAGIC stock was given to the Senate Committee by Robert F. Thompson, executive vice-president of the Tecon Corp. of Dallas. The firm is headed by Clint Murchison Jr.

Thompson related that he met Baker about seven years ago and added that he thought it was in the office of Lyndon B. Johnson, then Senate Majority Leader.

'Good Stock Deal'

Baker introduced him to MAGIC in late 1960, said Thompson. "Bobby called me in Dallas," he told the committee, "and explained that he had what he thought was a good stock deal."

Thompson related that he came to Washington several days later and arranged by long-distance telephone a $180,000 loan with the First National Bank of Dallas with which to buy MAGIC stock.

He said he and Baker made a "Texas agreement"—a verbal understanding — to share the note as well as profits and losses on a matching basis with Baker.

In October, 1961, testified Thompson, he and Baker made another loan, this time for $250,000, and bought 5000 shares of stock in the Milwaukee company. Although Baker and Thompson retained ownership of the shares, they assigned four blocks of 900 shares each to Thomas D. Webb Jr., Murchison representative in Washington; Francis Law, Webb's law partner; Ken Curtis, who plays in the television Western, "Gunsmoke" and Robert Comstock, Baker's brother-in-law.

Tells of Profits

He said that he and Baker had made profits of $22,000 each from joint investments in MAGIC and in Investors Diversified Services Inc., a firm over which the Murchison interests waged a prolonged proxy battle.

On the basis of current market values, said Thompson, they are losing, on paper, some $3000 from their common stock investments.

Thompson also disclosed that in November, 1962 he made Baker a written offer to buy the Carousel Motel in Ocean City for $1.5 million. He denied a suggestion by committee chief counsel that the offer was made only to help Baker establish a price in the subsequent sale of the motel to the Seru-U Corp.

Thompson's disclosure was called a "shocking" revelation by Gertrude C. Novak, Baker's partner in the Carousel, who was recalled to the witness stand after the Texan's testimony.

"I never heard of the offer and we were looking for buyers," she said. "This is just really something."

The account of Baker's trip to the Dominican Republic last year was provided by Miami accountant George M. Simon, who said the Senate official was accompanied by Las Vegas hotel and gambling entrepreneur Edward Levinson.

Dominican Jaunt

Simon said a third man on the trip was Jack Cooper, whom he identified as a Miami investor whose holdings included a dog racing track. It was not clear from the testimony whether the Dominican jaunt paid off in the discovery of business opportunities.

Cooper's name has been in the news in connection with windfall profits and tax evasion.

On June 11, 1954, the Federal Housing Administration charged that Cooper Apa ments, Inc., of New Have Conn., had made a windfa profit of $32,124 by obtainin an FHA loan of $667,000 on project which cost only $61 676 to construct. Jack B. Coo er was listed as one of th owners of the firm.

On Feb. 12, 1961, Coop was found guilty of tax ev sion in a case that grew o of his helping the Dominica Republic buy 42 fight planes in 1952. The followin spring, Cooper's attorney asked that the tax case be r opened. On April 8, 1962, the filed a brief in Miami whic stated that Cooper had helpe Trujillo embezzle $744,0 from the Dominican Repu lic.

Cooper said that he had r ceived only $69,000 of th money. However, A Federa judge had ruled that Cooper profit on the transaction ha been $744,000.

Cooper's attorneys filed mo tions which claimed that th embezzlement income, under Supreme Court decision, wa not taxable at that time However, they failed to obtai a reversal of the previou finding, and on Jan. 6 of thi year the Supreme Cour denied Cooper's petition for writ of certiorari.

Cooper and Levinson tool part in the initial organiza tion of Serv-U Corp., the con troversial vending machine company that lies at the cen ter of the Baker conflict-of interest case, according to Simon.

Rules Committee special counsel L. P. McLendon brought out during Simon's testimony that Baker and North Am-Ryan Aviation Corp. consultant Fred B. Black Jr. owned 57 per cent of Serv-U stock. Black and Baker are co-defendants in a Federal court suit here claiming that they conspired to break a vending contract at the Falls Church, Va., plant of Melpar, Inc.

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Central Figure Waits In Wings

World of 'Wheelers and Dealers' Is Unveiled in Baker Hearings

By Laurence Stern
Staff Reporter

"If I had gone to a Hollywood producer five months ago and told him about the Bobby Baker case," mused one Capitol Hill insider recently, "I would have been told to go have my head examined."

But today, five months after its humble birth in a Federal Court civil suit here, the Bobby Baker Affair has generated political tremors that have jarred the White House, Capitol Hill and a string of Federal agencies.

And this week Senate investigators are expected to take explosive new testimony on Baker's myriad financial operations and chart a course for the final lap of the Capitol Hill conflict-of-interest inquiry.

Revives Old War Cry

The Baker case has revived talk of a "mess in Washington," the political war chant that helped put a Republican in the White House more than a decade ago, after the scandals of the Truman era.

It has opened vistas of the private world in which the former Senate Majority Secretary operated, a world peopled by Texas tycoons, influential Washington lobbyists, Las Vegas gambling figures, lawmakers, big and little wheelers and dealers.

It is a world never described in civics texts and rarely visible to most citizens.

Last week President Johnson was personally involved in the Baker case and just yesterday he declined to be drawn again into the controversy.

President Closes Topic

At an impromptu press conference yesterday, the President sidestepped a press query about the $585 stereo hi-fi that was delivered to his home in 1959 as a gift. He said he had "spoken fully" on the subject and "said what I had to say."

He caused eyebrows to be raised at the conference by making a cryptic reference to a "miniature television."

News Analysis

(It was learned that the President's reference was to a $160 miniature Sony TV set presented to Sen. Barry Goldwater (R-Ariz.) by members of the Senator's staff last Christmas. A Goldwater spokesman recalled that the Senator reciprocated—in the spokesman's case—with a pair of cuff links, adding that "I fail to see the parallel.")

But neither the President nor his No. 1 personal aide, Walter B. Jenkins, have yet dispelled contradictions between the White House version and testimony to Senate investigators on the hi-fi gift as well as advertising and insurance transactions with the Johnson family's Texas television station.

Already the President's most active Republican challenger, Sen. Barry Goldwater (R-Ariz.) has aimed his fire at the stereo gift. Other GOP orators with no fidelity to the White House have compared the hi-fi gift to the home freezers and coats—both vicuna and mink—of past Washington scandals.

One of the sharpest ironies of the Baker case is that Senate Rules Committee investigators first learned of the hi-fi gift less than three hours before President Kennedy was assassinated on Nov. 22. The witness, Silver Spring insurance man Don B. Reynolds, then told the staff investigators that he had paid for the set and had it shipped to the Johnson home, at Baker's suggestion.

Reynolds said he paid Baker $15,000 for bringing in customers.

It was the first time that the name of the then-Vice President was implicated formally in the Bobby Baker investigation.

Baker Remains Silent

Still unheard from in the swiftly unraveling Senate investigation is its central target, Robert G. (born Bobby Gene) Baker, who parlayed his contacts and know-how into a stock, real

See BAKER, A8, Col. 1

Baker Case Unfolds New Vistas

estate and cash fortune valued at more than $3 million while on the Senate payroll.

This week the Rules Committee faces a show-down decision on when it will call Baker to testify. So far there has been no indication from Baker and his attorneys whether he will speak freely of his manifold financial interests or invoke his constitutional privilege to decline to talk at all.

The committee plans to take testimony Tuesday from Max H. Karl, of Milwaukee, whose Mortgage Guaranty Insurance Corp. served as a keystone in Baker's suddenly-acquired wealth. Karl is expected to tell how Baker acquired vast stock holdings, in one year valued at nearly $700,000, in the Milwaukee insurance firm that is familiarly known in the trade as MAGIC.

See Partisan Flare-up

And this week the Rules Committee, composed of six Democrats and three Republicans, will seek to outline the investigation's final phase. Partisan differences have flared repeatedly within the Committee over issues ranging from whether call girls should be questioned to whether Baker should be subpoenaed.

Chairman B. Everett Jordan (D-N. Car.), who has presided over the inquiry with the demeanor of a kindly uncle, has sought to avert open warfare between the two political factions. But the Democrats are clearly worried about the impact of the Baker revelations on this election year. And at least some of the Committee's Republicans sense in the Baker case a prime campaign issue next Fall.

In this combustible political climate, an explosion seems almost inevitable.

Justice Dept. Offstage

At this point in the Baker inquiry, the Justice Department is looking over the shoulders of investigating Senators into at least two transactions in which Baker figured—a $34,000 Federal disaster loan to his storm-damaged Ocean City, Md., motel and a $19-million contract for the District Stadium awarded to Philadelphia contractor Matthew McCloskey.

In following the convolutions of the Baker case, the FBI has not poured out as much time and manpower since it pursued the trail of fallen Texas financier Billie Sol Estes. The FBI already has recommended that a grand jury be impaneled to look into several deals in which Baker figured. But the Justice Department chose to wait until the Senate investigation is completed.

Nearly an alphabet-full of other Federal agencies are conducting their own investigations into aspects of the Baker case: the Internal Revenue Service, Small Business Administration, Federal Housing Administration, Home Loan Bank Board, Civil Aeronautics Board, and still others.

Didn't Know Facts

Officials of two agencies, SBA and the FHA, already have acknowledged to the Senate Committee that they would not have approved credit to Baker if they had known the facts uncovered by Rules Committee investigators.

SBA spokesmen ruefully confessed that they would not have granted the disaster loan had they known a $100,000 "loan" listed by Baker could not be withdrawn from the tendering bank. FHA officials announced they would have disapproved the sale to Baker of a co-op townhouse in Southwest Washington if they knew he would turn it over to a former Tennessee beauty queen and her roommate, at the time Capitol Hill staff employes.

More disclosure and more sensations lie ahead.

The Committee still is following the thread of Baker's association with Las Vegas gambling entrepreneurs who were fellow stockholders in the Serv-U Corp., a $4-million-a-year vending machine concern, and fellow borrowers of large sums from the Oklahoma Bank of the late Sen. Robert S. Kerr (D-Okla.).

Bisdy Link with Black

Senate investigators also are looking into his ties with North American Aviation Co. industrial consultant Fred R. Black Jr., an expert on space and defense programs. Black, who is un-

payment of $100,000 in income taxes over a period, is a defendant with Baker in the District Court vending machine suit.

The suit alleges that Baker and Black used their influence to break a vending machine contract at the Falls Church, Va., plant of Melpar, Inc., a North American subcontractor on defense contracts.

Also under investigation are Baker's relations with Thomas D. Webb Jr., Washington representative for the Murchison financial dynasty, of Dallas. Testimony has been presented to the Committee that Webb served as a "straw" investor for Baker in a Florida real estate deal.

PROBE—From Page A1

Sale of Baker Co-op House Reported Stalled by Its Luxury Furnishings

queen of Loudoun County, Tenn., is now said to be working in Baker's private law office at 2000 P st. nw. Miss Martin is in Miami where she is employed by Smathers' former administrative assistant, Scott I. Peek.

The hitch in selling the townhouse, Tyler explained to the Senators, stems from the scarcity of buyers willing to purchase — along with the townhouse — some $6615 worth of lavender carpeting, French wallpaper, mahogany basement paneling, patio shrubbery and other special touches paid for by Baker.

"Would the house have been sold already if it were not for the luxurious furnishings" asked Sen. Joseph S. Clark (D-Pa.). Replied Taylor: "We would have sold long before now."

Unsuitable for Family

The co-op official said the four-bedroom, two-bath house is "essentially a family unit" but that the elegantly refurbished Baker townhouse "was hardly suitable for a man with a family."

He volunteered to the committee that "I have not been in the town house I'm glad to referred to townhouse as 'a say.' At one point Taylor referred to townshouse as "a fancy, euphemistic word for a rowhouse."

Taylor acknowledged that officials of the co-op were aware when Baker first applied for the townhouse late in 1963 that he would be in violation of the occupancy provision.

In the application Baker identified Miss Tyler and Miss Martin as occupants.

When Baker first applied, a former co-op manager called the project's Stamford, Conn., headquarters and pointed out his non-curvilinear. He said headquarters replied, Taylor testified, to "leave that up to the FHA. If they don't think it's right, let them bounce it back."

Taylor then told the Committee in his opinion "the application should not have been accepted, never forwarded to the FHA, and once there, should never have been approved."

After action was started to end Baker's ownership of the townhouse, Taylor related, the former Senate official threatened legal action. "I asked him what he meant by that since if anyone was going to sue, we would sue him," said the co-op president.

Baker, he said, insisted "sternly and steadfastly that there was nothing wrong with having Miss Tyler in the house either morally or legally."

Harry E. Johnson, director of FHA's co-op housing division, told the Committee that he "certainly would not" have approved the credit for Baker if he had known the occupancy arrangement.

Lives in Spring Valley

The former Senate official resides with his wife and five children in a $125,000 colonial-style home in Spring Valley, all the way across town from the aluminum-sheathed Southwest development.

Johnson told the Committee that Baker's occupancy arrangements with Miss Tyler and Miss Martin were reported by the co-op on an "extraneous form" that had nothing to do with Baker's credit acceptability.

"If we had known about the arrangements, I'm sure we would have regarded it as important," insisted Johnson.

One mystery figure emerged from yesterday's testimony, a former Washingtonian by the name of W. A. Jernigan, who identified Baker in a telegram to the co-op [illegible] as "my partner."

The full text of the October 30, 1962, telegram was: "Please release townhouse at 306 N st. to my partner Robert G. Baker. Please apply my check to his account.—W. A. Jernigan."

The Committee did not delve into how Jernigan acquired an interest in the house. All it did was to release the text of the telegram and an internal memo by a River Park co-op official

Washington Post
1/25/64

noting that "W. A. Jernigan will send in a wire transferring his int. (sic) to Baker . . ."

Denies Business Ties

Jernigan listed with the co-op as his office address, 1730 K st. nw., the business suite of a firm headed by Government contact man and industrial consultant Fred B. Black Jr., a co-defendant with Baker in a District court vending machine suit.

Reached in Jacksonville, Jernigan confirmed that he worked as office manager for Black's firm, Blyco Co., but insisted that he had no financial associations with Baker. "I've known Mr. Baker a long time and I think a lot of him," Jernigan said. "But we were not in business together."

Jernigan said he had no knowledge of the co-op unit.

The Committee also introduced in evidence five checks for monthly rent of $238 each at the townhouse from November, 1962, to April, 1963, signed by Baker and endorsed to the co-op.

The Washington Post, Jan. 16, 1964

Sen. Kerr's Son Confirms Loans Made to Baker by Family's Bank

By Laurence Stern
Staff Reporter

The son of the late Sen. Robert S. Kerr (D-Okla.) confirmed yesterday that former Senate Majority Secretary Robert G. (Bobby) Baker received loans from a Kerr family bank in Oklahoma City, Okla.

Robert S. Kerr Jr., a director of the Fidelity National Bank & Trust Co., said the bank also made loans to the Serv-U Corp. and to the North American Aviation Company's consultant on Government policy, Fred B. Black Jr.

Young Kerr declined, however, to comment on the size or purpose of the loans, which came to light Monday during a Senate Rules Committee hearing in the Bobby Baker conflict-of-interest case.

Four Loans Listed

Investigators said they had evidence of four loans, totaling $388,348, from the bank while the late Senator still had an active role in its affairs. The evidence, according to the Committee, came from corporate records of Serv-U.

In the years immediately prior to his death, Kerr was widely regarded as the most powerful member of the Senate. Baker's relationship with the influential Oklahoma Democrat were extremely close, according to knowledgeable Senate sources.

Black was the largest individual borrower from the Oklahoma City Bank, evidence made public by the Committee showed, and he also played a key role in the early financing of Serv-U. He is currently under indictment for evading $105,000 in income taxes.

Serv-U Loans Cited

Committee records indicated yesterday that Black made one loan of $67,500 from Fidelity National and then lent it to Serv-U in early 1962; that he guaranteed a $96,848 loan to Serv-U by the bank in June, 1962; that he gave a personal check for $100,000 to Serv-U on May 8, 1962.

Fidelity National also lent Black, Baker and two Las Vegas men $175,000 in 1962 to acquire stock in the Farmers and Merchant State Bank of Tulsa. Sen. Kerr himself acquired stock in the Tulsa bank when it underwent a major expansion the same year.

Serv-U's former president, Eugene A. Hancock, told the Senate Rules Committee on Tuesday that the vending machine company began operations on its first major contract with Black's company, North American, in March, 1962.

He also said Black set up an appointment for him with North American officials to discuss the contract the preceding December, when Serv-U had no staff, machines or paid-in capital.

Black and Baker denied that they owned any stock in Serv-U when they replied to a civil suit filed in the United States District Court here last September. The suit charged that both men conspired to cancel a vending machine contract at Melpar, Inc., a North American subcontractor in Falls Church.

In the aftermath of this week's disclosures the Rules Committee inquiry will probe more deeply into Black's associations with Serv-U as well as the apparent participation by Nevada gambling interests in the financing of the firm.

Serv-U's own corporate records indicated that three Las Vegas men, Edward Levinson, Edward Torres and B. B. Sigelbaum, at one time held more than a one-third share of the vending concern that has played a principal role in the Bobby Baker case.

Levinson is a prominent Las Vegas gambling operator who participated with Baker, Black and Sigelbaum in the Oklahoma bank transaction, according to evidence before the Rules Committee.

The Rules Committee has received a secret briefing from

the Justice Department on persons figuring in Serv-U's early financing and operations but the information was not divulged by the Senate investigators.

Sen. Howard W. Cannon (D-Nev.), the member of the Senate investigating panel most familiar with the Las Vegas area, was not present during this week's hearings. He was on military reserve duty in the Washington area, according to his office staff.

Closed Session Friday

The committee announced yesterday that it will take further testimony in executive session on Friday from Don B. Reynolds, Silver Spring insurance man with whom Baker was formerly in business.

In addition, the office of Sen. George A. Smathers (D-Fla.) confirmed that a tract of land in which the Senator held a joint interest with Baker lies in the vicinity of the booming Cape Canaveral region in central Florida. Smathers' former administrative assistant, Scott I. Peek, also held an interest in the land.

On the basis of the Senator's computations, Baker and Peek made between $7000 and $8000 on an initial $1500 investment with Smathers and the Florida Senator grossed more than $40,000 during the same period on a $8000 investment.

Smathers explained that he offered a share of the land to Baker and Peek because they had "young, growing" families. He explained that he has no other business relations with Baker.

The Washington Post
1-15-64

Baker Quiz Airs Ties by Gamblers

Vending Official Wary in Replies About His Role

By Laurence Stern
Staff Reporter

For Eugene A. Hancock, soft-spoken president of the Serv-U Corp., life was just one big surprise after another.

Even members of the Senate Rules Committee were profound in their surprise at Hancock's lack of information about the affairs of the company he nominally headed for nearly two years.

Serv-U is the fast-growing California vending machine concern that lies at the heart of the Bobby Baker conflict-of-interest case the Rules Committee is now seeking to unravel.

Hancock acknowledged surprise when he was informed by Rules Committee special counsel L. P. McLendon that three Las Vegas men, one of them a known gambling figure, owned large blocks of stock in his company.

More Surprises

He was surprised to learn that one of the Las Vegas men, Edward Torres, was paid $75,000 by Serv-U for stock in which he invested only $6000 less than a year earlier. "If that's true, I'd sure like to sell my stock," Hancock wistfully retorted.

One of his pleasantest surprises was when the North American Aviation Co. signed an $800,000-a-year vending contract with Serv-U early in 1962 while it was still a paper organization—displacing a large, established vending concessionaire.

Rep Byrnes's Mortgage Guaranty Insurance Corp. stock sold; $22,280 goes to home town foundation.
Page A7.

"Hancock acknowledged that doors at North American's California offices were opened for him through an advance call from the company's Washington Government contact man, Fred B. Black Jr.

President 'in Name'

"Were you president of the corporation?" Sen. Carl T. Curtis (R-Neb.) finally asked, with a touch of exasperation.

"I think I was," Hancock replied.

With Hancock in the witness chair, the Committee's inquiries yesterday raised more questions than they answered.

He told the investigators that while he was Serv-U's president "in name only," the real kingpin in the operation was Baker's law partner, Ernest C. Tucker.

Tucker, he said, was "secretary and chairman of the board. He had it wrapped up. He controlled the bank account."

Hancock told the Committee that Baker, in a private conversation, had denied an accusation that he took $5000 in payoffs from Washington vending machine operator Ralph L. Hill. After learning of the charge, Hancock said, Baker described Hill as a "lying son-of-a-gun."

Baker Appearance Hinted

Baker further told him that Hill had perjured himself in testimony to the Committee Monday, Hancock said. The former Senate official said that he "was going to come down here and go against Mr. Hill," Hancock reported.

Sen. Hugh Scott (R-Pa.) observed afterward that this was the first word from Baker on whether he would testify during the current Senate inquiry. There have been reports that Baker would decline to appear.

The Rules Committee itself is split on the question of whether to subpoena Baker as a witness. Some members want to issue a subpoena but the majority oppose such a course at this time.

While examining Hancock, Special Counsel McLendon said the Committee has evidence that Baker teamed up with Black and two Las Vegas men to borrow $175,000 from one bank to buy shares in another.

The Las Vegas men, Edward Levinson and B. B. Sigelbaum, together with Baker and Black borrowed the money from the Fidelity Bank and Trust Company of Oklahoma City. With the proceeds, said McLendon, they bought stock in the Farmers and Merchant State Bank of Tulsa.

What relationship this transaction bore to Serv-U's operations was not made clear by McLendon.

The late Sen. Robert S. Kerr (D-Okla.) was associated with Fidelity National Bank & Trust Co., and his son, Robert S. Kerr Jr., is now a director.

Levinson, who holds an ownership interest in a Las Vegas motel, sought and received Baker's help in trying to extend his gambling operations to the Caribbean. Baker set up some appointments for Levinson with hotel interests operating in the Dominican Republic and Dutch West Indies.

Hancock told the Committee he knew nothing of the bank transaction. He said he did not even know that Levinson and Sigelbaum were stockholders in Serv-U. McLendon disclosed on Wednesday that Sigelbaum and Levinson each owned 1300 shares of Serv-U's 10,000 outstanding shares.

Serv-U's own records also indicated that Baker and Tucker owned majority control of the company at 2850 shares each; Hancock owned 1200 shares and Torres, 400 shares, the records indicated.

Hancock told the Committee that Baker did make an appointment for him with officials of Melpar Inc. to discuss a vending contract at the Falls Church defense subcontracting plant.

But he denied testimony given Monday by former Capital Vending Co. president Ralph L. Hill that Melpar officials said the contract had been promised to Baker.

Hancock denied other portions of Hill's testimony when asked to comment on it by Sen. Robert C. Byrd (D-W. Va.) Byrd on Monday accused Hill of being "evasive" in response to his questions.

Senators Ruled Out Of Baker Case Roles

The chairman of the Senate investigation into the Bobby Baker affair said yesterday that "we are not investigating Senators."

This comment by Sen. B. Everett Jordan (D-N.C.) was prompted by a newsman's question about whether he planned to invite testimony from Sen. George A. Smathers (D-Fla.) on a joint land deal in Florida with Baker.

"I will not bring him in, or any other Senator," Jordan replied. "This is my decision."

He said that although Hill got the Melpar contract, "it was on the understanding that he would buy out Hill's company when he decided to move into the Washington area.

Promised Commissions

Hill denied on Monday that he took the $300,000 Melpar contract on a short-term basis. He said he would never have installed the machines at Melpar if the contract were to be taken away within a year.

Hancock, now president of Automatic Vending Services Inc. of Miami, testified that last July he signed an agreement with Interstate Vending of Chicago that he would receive commissions on sales from machines placed in the Melpar plant.

Interstate did succeed Hill's company in Melpar last September. Hancock denied that Baker was to receive commissions also from Interstate's sales in Melpar.

He pointed out to the committee that he had not been paid for his services to Interstate. Hancock explained that a lawyer for the Chicago firm requested that he defer question of payment "until the Senate investigation is over."

Hancock also disclosed that last summer he attempted to hire I. Scott Peek, former administrative assistant to Sen. George A. Smathers (D-Fla.) when he learned that Peek was leaving his Capitol Hill job and considering a rival vending firm's employment offer.

"I didn't want Scotty Peek fighting me in Miami. I know Scotty Peek and he knows Florida well," Hancock said. The deal apparently did not go through. Peek opened his own business in Miami.

Peek was identified in Monday's testimony as having taken part with Smathers and Baker in a joint Florida land investment transaction.

Baker Didn't Pay City Income Tax, D.C. Says

Black Also Investigated

District Claims Baker Didn't Pay City Taxes

By Jack C. Landau
Staff Reporter

The District Finance office has started an investigation into what it says is the failure of Robert G. (Bobby) Baker and Fred B. Black Jr. to file District income tax returns.

Baker was formerly Secretary to the Senate Majority and his business affairs are now being looked into by the Senate Rules Committee, the FBI and the Internal Revenue Service.

Black is a Government contract man for North American Aviation Corp., Inc. and the president of Blyco, Inc. a public relations firm here.

Black is under a Federal indictment for evading $109,000 in Federal income taxes for the years 1956 through 1958. Both Baker and Black are defendants in a vending machine contract influence suit.

The plaintiff in the suit,

Baker's attempt to influence FHA revealed. Page A16.

Senate hires investigators for start of Baker probe. Page A16.

Capitol Vending Inc., claims that Baker, Black, the Serv-U Corp. and its chairman of the Board, Ernest G. Tucker, all conspired to deprive Capitol of a $500,000-a-year vending machine franchise with Melpar Inc. of Falls Church.

District Finance Officer Kenneth Back said: "We've got Mr. Baker and Mr. Black under investigation. Mr. Baker has never filed a tax return with us. Mr. Black has filed only for the years 1961 and 1962."

Back said that his office started investigating both men in late September. He said an attorney from New York City representing Baker had argued that Baker was exempt from District taxes.

Leo Ehrig, supervisor of the District's income and franchise tax section, reported that Baker's attorney claimed that as "an elected officer of the Government of the United States," the statute exempted Baker.

The statute requires District income tax returns to be filed by a resident domiciled here on the last day of the year or who maintains a residence here for seven months of the year.

Ehrig said that Baker's attorney relied on the provision that "resident" shall not include any elected officer of the Government of the United States."

Elected by Senate

Baker's attorney argued Ehrig said, that Baker was elected by the Senate as a whole and served as an officer of the Senate.

Ehrig said that he had initially determined that Baker was not an elected officer of the Government but gave Baker's attorneys a month to file a memorandum of law on the argument. Ehrig said he interpreted the provision as applying mainly to congressmen and not to an elected staff position.

Baker maintains no listed residence or telephone in Pickens, S.C., where his father is postmaster. His South Carolina driver's license record states his address as his former Senate office.

Baker and his family presently live in a $125,000 house

at 5115 Van Ness st. nw. The family previously lived on Northampton st. nw.

Black Indictment

Black, Ehrig said, filed his District tax returns for 1961 and 1962 last Aug. 15 after receiving an extension of time for the late filing. He filed no previous returns with the District, Ehrig said.

Black was indicted on the Federal charge in Kansas City, and formerly lived in Joplin where his mother still resides.

In papers bearing on the Federal income tax case, Black said that he purchased a home at 4054 52d ter. nw. in "April, 1958, and resided at this address ever since April, 1958, having purchased said property as our permanent residence."

Black also said in the papers that he had lived at 4421 Hawthorn st. nw. from Sept. 27, 1956 to July 29, 1957. "We maintained our residence at 4421 Hawthorn st. nw. until April, 1958," he added.

Black gave the information about his residences in a motion to change the venue of the tax suit from Kansas City to Washington, which he said is his home.

District Finance Office officials said they started inquiring about Baker after the first reports of his widespread business ties were publicized in late September. He resigned as Senate Majority Secretary on Oct. 7. The IRS investigation was launched at the same time and was understood to be covering all of Baker's financial operations.

The District investigation of Black started last April as a result of the income tax evasion indictment which was handed down in Kansas City in March.

Capitol Vending Co. Asks Records Of Baker Deals and '62 Tax Returns

By Ernest Lotito
Staff Reporter

The Capitol Vending Co. yesterday asked that former Senate Majority Secretary Robert G. (Bobby) Baker be required to submit for their inspection a copy of his 1962 income tax return.

David Carliner, lawyer for the company, said he wanted the return, and other documents, to help establish the validity of testimony that Baker's lawyers would take from his clients in depositions Nov. 13. A U.S. District Court Judge must rule on Carliner's "motion for production of documents" request.

It was a Capitol Vending suit, filed in the Court Sept. 9, that gave the first public indication that Baker had extensive business dealings, and led to his resignation Oct. 7. The suit said that Capitol Vending paid Baker a total of $5600 "for his services in securing and retaining" a $300,000 a year vending machine franchise for Capitol Vending at Meipar, Inc., of Falls Church.

Capitol Vending took over the Meipar franchise from the Macke Vending Co., and lost it in August to the Interstate Vending Corp. of Chicago. Capitol Vending says it lost the account as a result of Baker's interference. Baker has formally denied the allegations of the suit.

Carliner also requested that Baker, Ernest C. Tucker, Board chairman of the Serv-U Corp., with which Baker is alleged to have close financial ties, and Fred Black Jr., a Government contract man for North American Corp., produce "individually or jointly" the following:

- All papers and records relating to Baker's and Black's financial dealings with Serv-U.
- Records relating to the "purchase, financing and storage" of certain vending machines.
- Papers relating to any transactions between Interstate Vending Corp. and any of the defendants.
- Records relating to the negotiation of any agreements between Serv-U and North American.
- Papers relating to "any activity" undertaken by Baker in behalf of Black, North American, Meipar or Serv-U.
- The same for Black in behalf of Baker or the others.
- All "minutes, resolutions, records, and correspondence" of Serv-U, and its officers and employes relating to the consideration of any proposal to purchase the assets or outstanding stock of Capitol Vending."

Specifically requested were any "papers and records" relating to Baker's stock holdings in Serv-U, payments made to him by the company "for any purpose whatever," and financial dealings between Baker and Serv-U.

Saturday, Oct. 26, 1963 THE WASHINGTON POST

Saturday, Oct. 26, 1963 THE WASHINGTON POST

The Washington Post

This is the entrance to the Quorum Club Inc.

Baker Tied To Lobbyist VIP Club

Legislators Listed Among Members Of Hill Setup

By Laurence Stern
Staff Reporter

An in-town hideaway for the "advise and consent" set, the Quorum Club Inc., was formed by the law firm of Robert G. (Bobby) Baker, former Senate Majority Secretary. Baker himself is a charter member and the Club's original secretary.

The Club, an intimate and elegant gathering place for lobbyists and Congressmen is housed in the Carroll Arms Hotel at 1st and C sts. ne., within two blocks of the Capitol.

Its purpose, according to a charter filed with the District in 1961, is "to establish, maintain and operate a club for literary purposes, mutual improvement and the promotion of social intercourse."

The Club's incorporators of record are Baker's law partner, Ernest C. Tucker; Axel W. Oxholm and Frank Weiss. All are listed in District records at the address of the law firm, Baker and Tucker, at 2000 P st. nw.

"80 Per Cent Lobbyists"

Baker himself was not listed as an incorporator, although he was described by several members as one of the Club's original backers, as well as a charter member and officer.

One charter member of the Club described its composition as "more than 80 per cent lobbyists and the rest illill people." Among the Congressional members are Sen. Harrison A. Williams (D-N. J.), Rep. William H. Ayres (R-Ohio) and Rep. Frank Church (D-Idaho).

The Club is the latest activity to come to light in the wide-ranging enterprises with which Baker was associated while serving in his $20,000-a-year Senate post. These include an Ocean City luxury motel, billed at its opening as a "high style hideaway for the "advise and consent set," a California vending machine concern, a Silver Spring insurance agency, a District travel agency and a North Carolina motel.

Members can enter the Club through either an unmarked door next to the Carroll Arms newsstand or through another door inscribed with a large gilted "Q". Members also received specially designed cards, each labeled with four "Qs". It was announced originally that the cards were designed to open the doors automatically when applied to the doorbell.

The interior rooms of the Club are usually smoky and dimly lit, with small luncheon tables, an elegant bar and masculine decor. The deeply stained walls are adorned with several nude studies.

One charter member, Sidney Yudain, publisher of the Capitol Hill newspaper, Roll Call, said he used to frequent the Club but stopped going because "it was too far away from my office and the food was lousy."

Roll Call carried an announcement of the Club's opening in April, 1961, and said that membership was limited to 100 local residents and 100 non-residents.

The first president was Scott J. Peek, former administrative assistant to Sen. George A. Smathers (D-Fla.). Robert Humphrey, legislative adviser to the National Association of Manufacturers was a vice president. Baker was secretary and Thomas Heslop,

former manager of the Carroll Arms, was listed as treasurer. All held office during the Club's first year.

Peek was succeeded as president by Glenn S. Troop, a vice president and lobbyist for the U.S. Savings and Loan League. The current president is Lyle O. Snader, an official of the Association of American Railroads.

Other early members listed in the Roll Call article were William Thompson, president of the Florida-East Coast Railroad; Thomas Pickford, president of the Carroll Arms; Robert Swain, president of the International Road Federation; Yudain and Troop.

Heslop, the former Carroll Arms manager, said in a telephone interview last night that the Quorum Club was "my idea and I started it." After leaving the Carroll Arms, Heslop was employed briefly at Baker's Ocean City motel, the Carousel Motor Inn.

The three incorporators of the Quorum Club were listed as officers or incorporators of other enterprises with which Baker was associated. Tucker is a vice president and chairman of the board of Serv-U Corp., the vending machine concern with which Baker and his wife, Dorothy, have extensive mortgage transactions.

Tucker acknowledged that he "set up the club and received a fee for it." He added that he is presently a member. Asked whether Baker participated in forming the club, Tucker replied: "I have no comment on that."

The Quorum Club's two other incorporators, Oxholm and Weiss, were similarly listed as incorporators for Go Travel, Inc., a Capitol Hill area travel agency of which Baker is listed on District records as a director. Weiss was also an assistant secretary of the Serv-U Corp., city corporation records showed.

The club's roster of some 200 members reads like a "Whos Who" of Washington lobbyists and industry officials.

One of the members, Stephen G. Slipher, another vice president of the U. S. Savings and Loan League, said that while he was among the original joiners he is "a poor club member."

Other prominent industry figures who belong to the club are Wayne L. Bromley, lobbyist for the National Coal Policy Conference, Inc., and Fred B. Black Jr., consultant to the North American Aviation Corp., who was named with Baker as a defendant in a civil suit alleging the improper use of influence to break a vending contract.

The Evening Star, October 23, 1963

Baker Disclosed as Owner Of Southwest Town House

Robert G. (Bobby) Baker owns a $22,000 town house which Senate records carried as the address of his former secretary, it was disclosed today.

Larry Chkoreff, manager of the new River Park development in Southwest Washington, told The Star that Mr. Baker, who resigned as Senate majority secretary October 7, owns a share in the co-operative and has occupancy rights to the house at 308 N street.

Senate disbursing office records listed 308 N street S.W. as the address of Carole Tyler, who left her Senate post as Mr. Baker's secretary when he resigned under fire.

Records submitted to the Federal Housing Authority by the co-operative list a K. C. Tyler, 23, as occupant, and identify her as a cousin of Mr. Baker's. A second occupant listed is M. A. Martin, 22, reportedly a girl friend of Miss Tyler.

The records also show that Mr. Baker signed a subscription agreement, applying for membership in the co-operative last Fall.

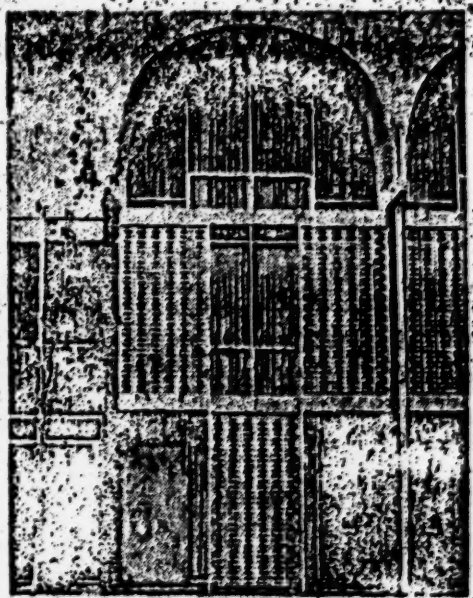
According to the FHA, Mr. Baker was required to make a $1,000 down payment to acquire his share in the development, and that the estimated monthly carrying charge of $219 plus utilities was later increased to $249 per month.

Last week, it was revealed that Baker, his wife and their five children had moved into a luxurious $124,500 Spring Valley home shortly before his resignation.

That property, located at 5118 Van Ness street N.W., was acquired April 30 from the Tennessee Gas Transmission Co. by Ernest C. Tucker, Mr. Baker's law partner.

District records show that Mr. Tucker acted as trustee for an unnamed party in executing the transaction.

Mr. Baker's financial holdings and real estate interests came under scrutiny when he, Mr. Tucker and Fred B. Black, Jr., were named as defendants in a $300,000 [illegible] use of improper influence in connection with vending machine contracts. Mr. Baker has denied all allegations.



This River Park (Southwest) town house, owned by former Senate Majority Secretary Robert G. Baker, is listed in Federal Housing Authority records as the residence of his former secretary, Carole Tyler.

THE WASHINGTON DAILY NEWS, WEDNESDAY, OCTOBER [redacted], 1963

The Washington Daily News

CITY EDITION

WEDNESDAY, OCTOBER 23, 1963

Bobby Baker Partner a Convicted Influence Peddler

(Page 3)

Interest in a Howard Johnson Lodge

Baker Shared in Motel With Influence Peddler

By JULIAN MORRISON

The outside business deals of former Senate Majority Secretary Robert G. (Bobby) Baker included a North Carolina motel partnership with a man later convicted as an influence peddler, The Washington Daily News has learned.

The partner in the Howard Johnson Motor Lodge in Charlotte is Raleigh businessman and former Senate aide Kidd Brewer, who was sentenced to jail last year for meddling in a highway road sign contract while serving as an agent of the Minnesota Mining & Manufacturing Company.

Brewer and former North Carolina Highway engineer Robert A. Burch were convicted of conspiring to write specifications for highway signs in such a manner that the 3-M company would get the contract.

DENIAL

The company denied any knowledge of Brewer's actions. The North Carolina Supreme Court upheld the

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convictions of both Brewer and Burch.

Mr. Baker, who quit his influential Senate job earlier this month, is charged in court here with using his influence to cancel a local vending machine firm's contract with a defense manufacturer after the firm had paid him to obtain the contract in the first place.

The company which operates the Charlotte motel lists as its directors Mr. Baker, Brewer and Raleigh contractor Seby B. Jones.

One of the early investors in the enterprise was Commerce Secretary Luther H. Hodges, who was then Governor of North Carolina. He sold his $50,000 share to Mr. Baker and Mr. Jones when he was named to his present post in 1961.

INVESTMENT

There is no evidence that the Commerce Secretary's interest in the motel was anything other than an investment.

He said he was approached by Mr. Jones as a potential investor when Brewer failed to put up his share of the money to construct the motel, and that at no time did he have any personal dealings with either Brewer or Mr. Baker.

The former governor said he had financial interests in several other unconnected Howard Johnson franchises in the state but sold all of them when President Kennedy asked him to become Commerce Secretary.

It was understood that Mr. Baker recently sold his interest in the Charlotte motel and has acquired an interest in a motel near Florence, S. C.

Mr. Baker's part ownership in another motel, the Carousel, near Ocean City, figures in the law suit filed against him in September.

The suit alleges that he sold it to the Serv-U Vending Co., a firm which has obtained several lucrative contracts with defense contractors since it was formed less than two years ago.

FLAT DENIAL

Yesterday, Serv-U, which is a co-defendant with Mr. Baker in the suit, filed a flat denial to all allegations made concerning it.

Mr. Baker and the other defendants, his law partner, Samuel C. Stoker and North Carolina Aviation Corp. [illegible] Reid B. Black Jr. had previously filed similar denials to the charges.

Meanwhile the Senate Rules Committee met behind closed doors this morning to plan its investigation of Mr. Baker's finances.

As a by-product of the inquiry, the committee was expected to take up the Senate employes pay system, under which jobholders are paid by cash, unless they specifically ask for checks.

Meanwhile, Sen. Hugh Scott (R., Pa.) said he'll fight to head off any delay in the inquiry, or any move to have the probe handled by a subcommittee. He said he expected such a move.

THE WASHINGTON POST Wednesday, Oct. 23, 1963

Baker Owns Town House In SW Area

4-Bedroom Home On N St. Occupied By His Former Aide

By Jack Landau
and Laurence Stern
Staff Reporters

A modernistic $28,000 Southwest town house is the newest financial knot in the tangled affairs of Robert G. (Bobby) Baker, the former Senate Majority Secretary.

Baker is listed as the owner of the three-story four-bedroom house at 308 N st. sw. in the cooperative development of River Park.

Baker stated on an occupancy agreement that he and his immediate family would live in the house. However, the plush, lavender-carpeted home has been occupied by Carole N. Tyler, Baker's former administrative assistant, and Mary Alice Martin, a former secretary on the staff of Sen. George Smathers (D-Fla.).

Baker, Miss Tyler and Miss Martin could not be reached for comment. Baker and his family presently live in a $125,000 mansion at 5115 Van Ness st. nw. This house was sold last May by the Tennessee Gas Transmission Co. and deeded to Baker's law partner, Ernest C. Tucker, as trustee for an unknown person.

Baker applied to River Park Mutual Homes, Inc., last October to purchase the N st. house. On the application he stated that Miss Tyler was his cousin and that she and Miss Martin would occupy the house.

The cooperative rules and the Federal Housing Authority standard form occupancy agreement specify that the owner should occupy the home.

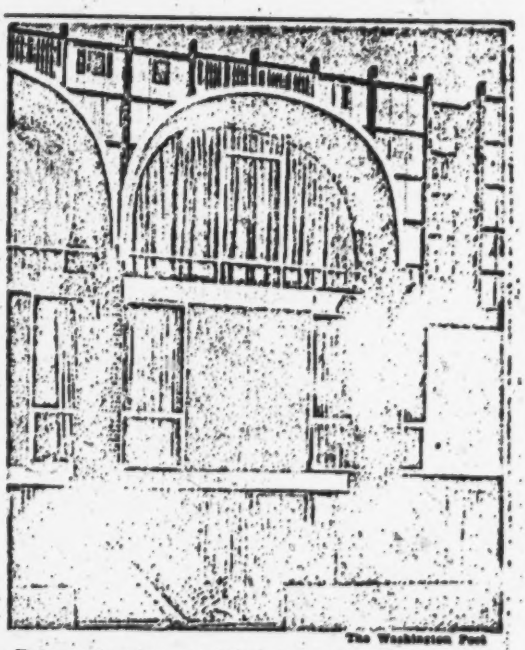
A spokesman for River Park said: "We knew of the weight that Mr. Baker carried on the Hill and we decided to let the loan process through the FHA."

An FHA spokesman said the Housing Agency approved Baker as a suitable credit risk for the down payment of $1600 and the monthly carrying charges of $219. The spokesman pointed out that FHA is primarily interested in a purchaser's ability to pay and not who occupies the house.

On the application form, Baker said his household expenses are about $3000 a year. He listed as a personal reference, Glen Troop, a representative of the U.S. Savings and Loan League in Washington, and as financial references, the American Security and Trust Co. and Raleigh Haberdasher.

Baker filled out a detailed credit application which FHA said it could not disclose. On the subscription agreement with the cooperative, Baker said he would sign an FHA standard form occupancy agreement and a lawyer for the cooperative reported that he did sign the agreement.

The agreement states: "The member shall occupy the dwelling unit . . . as a private dwelling for himself or for



The Washington Post

Entrance to a house at 308 N st. nw., listed as belonging to former Senate Majority Secretary Robert G. Baker and recently occupied by two Capitol Hill secretaries, Mary Alice Martin, 22, and Nancy Carole Tyler, 23. Miss Tyler was Baker's secretary.

himself and his immediate family, and for no other purpose . . . ."

A spokesman for River Park said Baker paid the monthly carrying charges himself but that the former Senate aide had no other contact with the management office. He said he did not know of any sub lease agreement between Baker and the two girls and pointed out that any sub lease would have to be approved by the cooperative.

Neighbors said that Miss Tyler, Baker's $9000-a-year administrative assistant, and Miss Martin moved in a year ago preceded by an army of carpet layers, carpenters, painters and furniture men.

Sen. Smathers' office reported that Miss Martin is now working in Miami for I. Scott Peek, Smathers' former administrative assistant for whom she acted as secretary. Peek recently opened a public relations office in Miami.

Meanwhile, Sen. B. Everett Jordan (D-N.C.) announced that he will hold a meeting at 10 a.m. today of the Senate Rules Committee, which he heads, to begin a formal inquiry into any possible conflicts of interest in the Bobby Baker case.

A spokesman for Jordan's office said that the initial meeting would take up the organization and form of the inquiry.

The Senate investigation was started shortly before Baker's resignation two weeks ago from his $19,500-a-year Senate job after the FBI and the Internal Revenue Service started looking into his extensive business interests.

In another development, the Serv-U Corp. filed a blanket denial to all material allegations of a law suit claiming that the vending machine firm had used influence to gain vending machine franchises.

Serv-U, which has offices in Washington and in Inglewood, Calif., denied that it interfered in the vending machine contract held by Capitol Vending Co., Inc., Washington, with Melpar, Inc., of Falls Church. Capitol filed the suit after the contract was cancelled.

The other defendants in the suit, who have already filed their answers in the United States District Court, are Baker, Fred Black Jr., government relations consultant for North American Aviation Corp., and Ernest C. Tucker, Baker's law partner and chairman of the Board of Serv-U. All denied the allegations in the suit.

Washington Star - Oct. 19, 1963

Vending Figure Fails in Move to Quash Tax Count

Fred Black, Jr., a co-defendant in the vending machine scandal involving the former Senate majority secretary, Robert G. Baker, has failed to win dismissal of one count of a four-count income tax evasion indictment.

Mr. Black, a consultant with offices at 1750 K street N.W., is charged in the indictment with failing to pay $100,000 in income taxes from 1956 to 1959.

The case is not connected with the vending suit.

Arguing the motion to dismiss the count before United States District Court Judge George L. Hart, Jr., defense attorneys said the six-year statute of limitations on Mr. Black's tax evasion charge had run out. The couple was charged in the one count with failing to pay $20,000 in taxes during calendar year 1956.

The indictment charges that Mr. Black committed the offense on December 4, 1957. He was indicted on March 29, 1963. Defense attorneys said the limitation of six years ran out on February 4, 1963.

But Judge Hart accepted Assistant United States Attorney Frederick J. Smithson's argument that the limitation statute did not begin for the 1956 return until April 15, 1957, the Government's administrative tax deadline.

The Washington Post October 19, 1963

Bid to Dismiss Tax Count Lost

Fred B. Black, ... governmental relations consultant for North American Aviation Corp., has lost a bid to dismiss one count of a four-count indictment charging him with evading $105,000 in income taxes from 1956 through 1958.

Judge George L. Hart Jr. of the United States District Court refused to dismiss the first count, which accused Black of defrauding the Government of $39,000 in taxes for the year 1956.

Black's attorney, Hans Nathan, argued that the indictment alleged Black committed the fraud on Feb. 4, 1957, and that the six-year statute of limitation for prosecution passed on Feb. 8, 1963. Black was indicted on March 29 and pleaded innocent to all counts.

Frederick J. Smithson, Assistant United States Attorney, argued that the statute of limitations for the 1956 return did not start to run until April 15, 1957, when the return was administratively due.

Judge Hart agreed with the Government's view.

Black, who has offices at 730 K st. nw., is a co-defendant in a vending machine contract influence suit against Robert G. Baker, the former Senate Majority Secretary; Ernest C. Tucker, Baker's law partner, and the Serv-U Corp., of which Tucker is chairman of the Board. The $300,000 damage suit was filed Sept. 9 by the Capitol Vending Co., Inc.

The Washington Post, Oct. 16, 1963

Co-Defendants Join in Move

Baker Denies Using His Influence In Vending Machine Franchises

By Jack Landau
Staff Reporter

Robert G. (Bobby) Baker, who resigned last week as Senate Majority Secretary, yesterday formally denied ever using his influence to arrange for vending machine franchises in government contract aerospace plants.

Baker's denial came in answer to a law suit filed in the United States District Court on Sept. 9, by Capitol Vending, Inc. of Washington. The suit asked $300,000 damages for alleged interference in Capitol's vending machine contract at the Falls Church plant of Melpar, Inc.

Two other defendants in the suit also filed across the board denials. They were Ernest C. Tucker, Baker's law partner and chairman of the board of the Serv-U Corp., and Fred B. Black Jr., a governmental relations consultant for Northrop-Nortronics Aviation Corp.

Baker left his Senate post last Monday in the wake of a Senate and FBI investigation into his outside business activities.

These include his publicly recorded financial ties to the Serv-U Corp., a vending machine firm which in 18 months has obtained $3.5 million in sales at Southern California government aerospace contract plants.

In the Capitol Vending suit the former Senate aide, and his co-defendants, flatly denied that:

• He had accepted $2000 to secure a $100,000 a year vending machine franchise for Capitol at Melpar.

• He had first attempted to buy Capitol out and when that failed, he allegedly persuaded Melpar to cancel its contract with Capitol.

• He is a shareholder in Serv-U.

• He represented to Black that "Baker, as Secretary to the Senate Majority, was in a position to assist in securing contracts for North American."

• North American put Serv-U into its plants "as a partial return for the services performed" by Black and Baker.

• Black and Baker assisted in securing North American subcontracts for Melpar.

• "In partial return for these services," Melpar agreed to contract with a vending machine firm in which Baker and Black had an interest.

The Washington Star, October 16, 1963

Baker Answer Denies Contract Meddling

By WILLIAM BASHAM
Star Staff Writer

Robert G. (Bobby) Baker has denied allegations that he interfered with a vending machine firm's private contract while serving as secretary to the Senate majority.

Mr. Baker's statement is in answer to a civil suit filed September 9 in United States District Court. The suit has sparked investigations into all business activities of the former Senate official. He resigned his Senate post last week.

Co-defendants Fred Black, Jr., and Ernest G. Tucker also denied allegations that they interfered with the contract as charged in the suit filed by attorney David Carliner for the Capitol Vending Co., Inc., of 23 I street S.E. The other defendant, Serv-U Corp., a vending firm at 2000 P street N.W., has been given until October 22 to answer the suit by agreement among attorneys.

Capitol Vending alleged that it paid Mr. Baker $5,600 to assist in negotiating a contract that permitted Capitol to put its machines in a plant operated by Melpar, Inc., in Falls Church.

The suit charges that a "time unknown" to Capitol, Mr. Baker became a stockholder in the Serv-U corporation and that last March he told Capitol that Serv-U wished to buy Capitol's outstanding stock. The suit claimed Mr. Baker told Capitol that unless the stock was sold to Serv-U, he would "arrange to terminate the outstanding agreement" between Capitol and Melpar.

When Serv-U failed to obtain the Capitol stock, the suit said, the defendants "conspired maliciously to interfere" with the contract between Capitol and Melpar. Last August 28, the suit claimed, Melpar informed Capitol that it was terminating their contract in 30 days.

In court answers filed, Mr. Baker denied arranging a contract between Capitol and Melpar. He also denied that he received money from Capitol and that he became a stockholder in Serv-U. Mr. Tucker conceded he was the board chairman of Serv-U and a stockholder but denied he aided in interfering with the contract. Mr. Black denied that he was a Serv-U stockholder or interfered with the contract.

All three defendants asked that the suit be dismissed.

The defendants also denied an allegation in the suit that a series of related business dealings involving them, Melpar and an aviation company led Melpar to terminate its contract with Capitol.

Capitol Vending has asked $200,000 in compensatory damages in its suit and $100,000 in punitive damages for the alleged "malicious interference" by the defendants with its Melpar contract.

Defense attorneys have filed notices with the court to take depositions from officials of Capitol Vending and Melpar. They also are requesting all records, correspondence and other documents pertinent to the suit's charges.

Mr. Baker, 35, of South Carolina, came to Washington as a Senate page. He had been secretary to the majority since 1955. The FBI has joined in the investigations of the former Capitol aide.

The Washington Post, Oct. 8, 1963

Baker Resigns Post As Probe Widens

Majority Aide In Senate Faced Inquiry on Deals

By Jack Landau and Laurence Stern
Staff Reporters

Robert G. (Bobby) Baker resigned yesterday as Secretary to the Senate Majority in the wake of widening investigations into his outside business interests.

Senate Majority Leader Mike Mansfield (D-Mont.) announced the 35-year-old Baker's resignation from his $19,000 a year Senate staff position, which he had held since 1955, after a huddle with ranking Senate leaders of both parties.

In a written statement, Mansfield praised Baker's performance as a staff member. But he added: "Developments during the past few weeks have made it apparent to him (Baker) that it would be best if he withdrew from office."

"I deeply regret the necessity for his resignation and the necessity for its acceptance," Mansfield stated.

These "developments" probably include investigations into Baker's business interests by the FBI and the Justice Department, and a one-man informal inquiry by a Republican Senator.

The Baker affair has been handled in the Senate's clubby tradition, with secrecy and decorum. Mansfield praised the Majority Secretary as a man of "great intelligence and understanding" who had acted with "great ability and . . . dedication" to his job.

Baker was not available for comment. He was not present, according to Mansfield, at the meeting. The Majority Leader said he talked to Baker before calling in the Senators to announce the resignation.

Mansfield refused to elaborate on his prepared statement except to say "it's been a most difficult situation."

Majority Whip Hubert H. Humphrey (D-Minn.), who sat in on the session, told newsmen that the majority, which elected Baker, did not request his resignation.

Among the other Senators who attended the meeting were Wayne Morse (D-Ore.); Clinton P. Anderson (D-N. M.); George A. Smathers (D-Fla.) and Warren G. Magnuson (D-Wash.). Senate Minority Leader Everett Dirksen (R-Ill.) and Sen. John J. Williams (R-Del.), who has been conducting his own inquiry into Baker's business activities.

Mansfield announced that Baker will be succeeded in his $20,000-a-year post by Francis R. Valeo, the 47-year-old administrative assistant to the Majority Leader.

All the Senators interviewed refused to state whether they thought Baker's outside interests were proper or whether their disclosure prompted his resignation.

Mansfield said that he deeply regretted "the necessity for his resignation and the necessity of its acceptance."

Sen. Williams said, "I was disappointed that Bobby did

not come to the meeting to answer some questions."

Suits Bares Deals

The first public indication that Baker had extensive business dealings came in a law suit filed in the U. S. District Court on Sept. 9.

The suit, filed by the Capitol Vending Co. of Washington, said that Capitol had paid Baker a total of $5600 "for his services in securing and retaining" a $300,000 a year vending machine franchise for Capitol at Melpar, Inc., of Falls Church, a prime government defense subcontractor for North American Corp.

Baker denied the allegation.

The $300,000 damage suit also named as defendants, The

AP and UPI Photos

Baker Valeo

Robert G. (Bobby) Baker, who resigned as Secretary to the Senate Majority yesterday, will be succeeded by Francis R. Valeo, administrative assistant to Majority Leader Mansfield.

Serv-U Corp., a vending machine firm; its chairman of the Board, Ernest G. Tucker, a Washington lawyer, and Fred B. Black Jr., a Government contact man for North American.

Serv-U started operations 18 months ago and now has an estimated $3.5 million in sales at five California aerospace plants engaged in Government defense contracts. Baker's wife, Dorothy; his brother, Charles, and his law partner, Tucker, are all identified as officers or employes of Serv-U.

Mrs. Baker holds a $10,000 year job on the staff of the Senate Internal Security Subcommittee.

Hold Firm's Notes

Mr. and Mrs. Baker hold $290,000 in promissory notes from Serv-U according to verified copies.

Vend magazine, a trade publication, said Serv-U's successes in aerospace plants contracts was the talk of the vending machine industry.

Serv-U had previously purchased the Carousel Motor Inn, in North Ocean City, Md., from the Bakers and their partners for $1.2 million, according to Maryland tax stamps.

The secretary to the Senate majority acts as chief lieutenant to the Majority leader, rounding up votes and advising on strategy.

Baker, a political protege of Vice President Lyndon B. Johnson, came to the Senate as a page at the age of 14. In 1955 Johnson, the then Majority Leader, named Baker to the position as Secretary to the Senate Majority. At the time, Baker was 28, and still six months short of earning his law degree from American University.

Valeo "An Intellectual"

Valeo, Baker's successor, was born in Brooklyn. He holds bachelor's and master's degrees in political science from New York University. Senate coworkers describe him as "an intellectual."

He worked for the Library of Congress as chief of the Foreign Affairs Division, for the Senate Foreign Relations Committee, and started working for Mansfield when the Montana Democrat became majority whip.

In another development, Senator Williams criticized an article in The Washington Post which he said suggested he used a hidden microphone while interviewing persons associated with Baker.

"I have been a member of the Senate for 17 years," William said, and there has never been a hidden microphone in my office and never will be." The story, as it appeared said a microphone was used to obtain a transcript of their interviews. In no edition was it reported that a hidden microphone was used. In one early edition it was not made clear that the persons knew in advance that a transcript was being made.

Newsweek

NATIONAL AFFAIRS

OCTOBER 7, 1963 25c

LAWSUITS:

The Serv-U Man

One of the least-known and most influential men about Washington is Robert G. Baker. It appeared last week that 36-year-old Bobby Baker is going to become much better known and a lot less influential.

As secretary of the Senate Majority, Baker—nicknamed "the Mole" because of his hunched, hurried walk—is the Senate's traffic cop. He is in charge of counting noses, corralling votes, and keeping Democratic senators informed. He is paid $19,612 a year for working in the Senate, and his wife, Dorothy, is on the payroll of the Senate Internal Security subcommittee at $11,757. A native of Pickens, S.C., he became a Senate page at 14, worked part-time as a Washington soda jerk, studied law at night, and eventually became so much the protégé of Lyndon B. Johnson, an ex-Senate page himself, that he is known as "Lyndon's boy."

Baker: Talk to who?

Many of Baker's influential friends discovered in July 1962 that he had impressive extracurricular activities, too. That was when they helped him open his luxurious 45-unit motel, 6 miles north of Ocean City, Md. Seven air-conditioned buses, each equipped with a champagne bar, and one with a calypso singer, carried some 200 VIP's out from Washington, serving them a catered brunch en route. The opening of Baker's million-dollar Carousel Motor Inn, described in its own brochures as a "high-style hideaway for the Advise-and-Consent set," brought out just about every bigwig from Vice President Johnson down. It was, according to one celebrant who enjoyed the motel's two cocktail lounges and its nightclub, "a big, wet, happy bash . . . It was good to see a poor boy from South Carolina doing so well."

Last week, official Washington was taking another look at the baby-faced "poor boy," and some of his friends. As a result of a civil suit filed against him in

U.S. district court by a coin-vending-machine operator, some of Bobby's other interests came to light.

▶The $300,000 damage suit named him as a stockholder in Serv-U Corp., a vending-machine company that placed machines in the plants of half a dozen defense and space contractors in two years of corporate existence.

▶In most cases, the complaint charged, the contractors dismissed other vendors, some of whom had been in their plants for years, to accommodate Serv-U Corp. The gross take of Serv-U's machines is estimated at $3.5 million.

▶The company suing Baker, Capitol Vending Co., Inc., charged it paid him $5,000 "for his services in securing and retaining" a contract to install its machines in the plant of a Falls Church, Va., aerospace contractor, Melpar, Inc. After Capitol signed the contract, the complaint says, Baker tried to persuade Capitol to sell out to Serv-U. Capitol didn't sell, and then, the complaint added, Baker "conspired maliciously to interfere with the outstanding contract between Melpar and Capitol."

▶The suit also named Baker as a business associate of Frederick B. Black Jr., a race-track-loving 50-year-old Washington management consultant who is a back-fence neighbor of Lyndon Johnson.

Black, now under indictment, is accused of failure to pay $185,000 in Federal income taxes. The suit charged Baker represented to Black that he was in a position to secure contracts for the North American Aviation Corp." (a Black client and holder of a $400 million aerospace contract and a $1.3 billion RS-70 bomber contract). As a result, according to the suit, North American put Serv-U vending machines in its California plants; and Melpar, a North American subcontractor, removed its Capitol machines and signed up "with a vending-machine operation in which defendants Fred Black and Robert G. Baker have a financial interest."

In its suit, Capitol Vending asked $200,000 in compensatory damages and $100,000 in punitive damages. The defendants, the Serv-U Corp., Baker, Black, and Serv-U's vice president, Ernest O. Tucker, had twenty days in which to answer the complaint.

Tucker, Black, and Baker denied any wrongdoing. "How got a contract for North American?" Baker asked. "I couldn't get a contract if my life depended on it. I've never got a contract through influence or used influence to get a contract for anyone. Who in the world would I talk to?"

Washington Sunday Star
October 6, 1963

WASHINGTON SUNDAY STAR OCT. 6, 63

Baker's Future Faces Showdown in Senate

By MIRIAM OTTENBERG
Star Staff Writer

A showdown is expected this week on whether Robert G. (Bobby) Baker shall continue as secretary to the Senate Democratic majority.

Likely to trigger the showdown is a Senator's report on his investigation of Mr. Baker's outside business interests.

The Senate Democratic leadership is known to be anxious to get what ever information has been developed so far by official sources on Mr. Baker's far-flung business activities.

The delicate problems involved in publicly discussing the private affairs of a long-time Senate employe were presumably threshed out at a behind-the-scenes conference attended by Republicans as well as Democrats.

Senate Democratic Leader Mansfield and Senator Humphrey, the assistant leader, saw newsmen after the conference Friday afternoon. Minority Leader Dirksen, Republican of Illinois, and at least one other Republican were said to have been closeted with the Democratic leaders, but Senator Dirksen refused to comment on the reported session.

Senator Humphrey, when asked whether the conference had dealt with Mr. Baker's status, replied, "not entirely."

Senator Mansfield told newsmen that Mr. Baker had not offered his resignation as secretary nor has he been asked to do so.

When rumors of Mr. Baker's impending resignation began circulating several days ago, Mr. Baker said it was news to him. He indicated at that time, however, that if his continued service ever became embarrassing to the Senate, he would step aside.

Aside from a Senator's independent inquiry, two official investigations are under way. The Internal Revenue Service has started an investigation and the Federal Bureau of Investigation is looking into Mr. Baker's role in the vending machine business.

Two Probes Start

In addition to the official inquiries, at least a dozen newsmen are running down records of Mr. Baker's business ventures, interviewing the soft-spoken Senate aide—and encountering a barrage of "no comments" from the Capitol to the Justice Department.

What precipitated the quiries was a civil suit filed here last month in which Mr. Baker was accused of getting a vending machine firm ousted from its contract with Melpar, Inc.

Named as defendants with Mr. Baker were Fred Black, jr., Washington public relations man currently under indictment on charges of filing fraudulent income tax returns; Ernest C. Tucker, Mr. Baker's law partner, and Serv-U Corp., which shares offices with Mr. Baker and Mr. Tucker at 2000 P street N.W.

A mortgage on file in the county clerk's office at Worcester County, Md., shows that Mr. Baker, his wife, Dorothy, and Serv-U Corp. were advanced $748,000 on the Carousel Motor Lodge at Ocean City, Md. The mortgage was signed on behalf of Serv-U by Mr. Tucker as vice president, and Mrs. Baker as "assistant secretary." Both Bakers also signed as individuals.

The Carousel was described in news reports as Mr. Baker's newest business venture when busloads of Washington notables attended a party at the new motel in July, 1962.

Sales Mushroom

Among those attended the reception were Vice President and Mrs. Johnson. It was the Vice President, as Majority Leader, who picked Mr. Baker for the key Senate job in January, 1955, six months before Mr. Baker earned his law degree from American University.

In addition to his base pay of close to $20,000, Mr. Baker has acquired considerable other income from such private ventures as his law partnership, real estate transactions and the vending machine business.

A description of the rise of Serv-U in Vend Magazine has made the trade publication's October 1 issue a best-seller around Washington.

Vend Magazine estimated that in 20 months of operation on the West Coast, the annual vended sales volume of Serv-U Corp. in California runs at or in excess of $3.5 million. The plants in which Serv-U machines are located, according to the magazine, all have sizable Government contracts.

The suit filed here by Capitol Vending Co., Inc., charged that Mr. Baker represented to Mr. Black, described as a consultant for North American Aviation Corp., that Mr. Baker was in a position to assist in securing contracts for North American Aviation.

Mr. Baker has verbally denied the allegations in the Capitol suit. All the defendants in the suit have been granted additional time to file an answer in court. The continuance was allowed because Mr. Black indicated he had planned to be in the Mayo Clinic. The answer deadline is now set for October 15.

The Washington Post
WASHINGTON, D.C.
D. 402,701 S. 481,212
OCT 6 1963

Sen. Williams Probes Into Bobby Baker's Business Dealings

Sen. John J. Williams (R-Del.) has started inquiring into the business interests held by U. S. Senate Majority Secretary Robert G. (Bobby) Baker, it was learned yesterday.

Williams began his informal one-man inquiry last week by calling into his office at least three persons who allegedly have had close commercial dealings with Baker recently.

The interviews, it was learned, lasted from a half hour to an hour and the Senator had a secretary taking notes in an adjoining room equipped with a direct microphone arrangement into his office.

Baker's business holdings have been the subject of recent publicity stemming from a law suit filed in the United States District Court here.

The suit claimed that Baker "as Secretary to the Senate Majority was able to and did represent" that he was in a position to assist in securing contracts for the North American Aviation Corp.

The $300,000 damage suit also alleged that Baker had received a $5600 in commissions for securing a vending machine franchise at the plant of a North American subcontractor, Melpar Inc. of Falls Church.

The other defendants in the suit were the Serv-U Corp., a California vending machine firm with $3.5 million in sales at Government contract aerospace plants; Ernest C. Tucker, Serv-U's vice president who is also Baker's law partner; and Fred B. Black Jr., a government contract agent for North American.

About a week after reading newspaper accounts, the Senator telephoned three persons linked to Baker and asked them if they would come to see him on an informal, confidential basis.

He asked them to detail their relationships with Baker starting from when they first met him and leading into any commercial transactions they knew about.

He seemed particularly interested in published reports of Baker's financial interests in the Carousel Motor Inn, in North Ocean City, Md., and in Serv-U. The latter firm lists Mrs. Baker as assistant secretary, and Baker's brother, Charles N. Baker, as an employe in its California plant.

The Senator also spoke to the three about the property of Senate staff officials having large business holdings and carried over into the morality of official life in Washington.

He told each of the three, at the end of the interviews, that he would question more persons. He told one interviewer that he thought the McClellan committee would not look into this area.

It was learned that the three were Ralph Hill, president of the Capitol Vending, Inc., which filed the suit against Baker in the United States District Court; Gertrude Novak, formerly a partner in the Carousel Motor Inn and the holder of $60,000 in notes from Serv-U; and Don Reynolds whose insurance firm in Silver Spring, Reynolds said, lists Baker as a vice president.

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Washington Sunday Post
October 6, 1963

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Sen. Williams was unavailable for comment.

Judge Asks Inquiry

Meanwhile, a United States District Court Judge has asked for a formal inquiry into the whereabouts last Monday of Black, one of the defendants in the vending machine contract suit, courthouse sources said yesterday.

Judge Edward A. Tamm made the request based on statement issued in his court which the official court reporter said was:

"The defendant Black is ill at Rochester, at Mayo. He is one of the alleged conspirators."

The representation as to Black's whereabouts last Monday was made by Abe Krash, an attorney, who appeared before Judge Tamm on Monday and asked for a continuance in the vending suit.

Krash told Judge Tamm that because of Black's absence, his office would need more time to prepare an answer to the complaint.

Left Sept. 26

Dr. James Eckman, an official of the Mayo Clinic at Rochester, Minn., said by telephone that Black checked into the clinic on Sept. 23 and left Sept. 26.

Courthouse sources said Judge Tamm sent Chief Judge Matthew McGuire a letter last Thursday requesting that the court's grievance committee investigate the case.

The sources said Judge Tamm was told by two newspaper reporters, neither of whom are connected with The Washington Post, that they understood from Black's office that Black was in town on Monday.

Continuance Granted

Judge Tamm refused to comment.

Krash said last night, "All I know is that I was informed by his (Black's) counsel and by other people that he was at the Mayo Clinic."

Krash represented Baker, Tucker and Serv-U in the court hearing. He did not represent Black. Based on Krash's representation, Judge Tamm granted a continuance until Oct. 15 with permission to apply for a further continuance if other illnesses or absences should affect the defense.

'If These Revelations Continue . . .'

Bobby Baker May Leave Hill Job

By JULIAN HORRIGON

Senate Majority Secretary Robert G. (Bobby) Baker will probably leave his powerful job before the end of October, a high Administration official told The Washington Daily News today.

Mr. Baker, 35, has held the job since he was 26, but continuing reports of his outside activities, triggered by a court suit alleging that he used his influence to cancel a vending machine firm's contract with an aero-space manufacturer, have brought the situation to a head.

"If these revelations continue to appear," the source said, "he will have to go."

THE LATEST

The latest revelation is this:

Mr. Baker often used his Senate-provided Lincoln to haul supplies from the District to his luxury ocean-front motel near Ocean City, Md., a round trip of 300 miles.

On one trip, when a Senate employe assigned to Mr. Baker's office was driving Mr. Baker to the motel, Delaware State Police tagged him for speeding.

Delaware State Police records show that the car ran thru a radar check point on Route 404 near Bridgeville at 8:32 p. m. on June 23, 1962.

The driver, Walter Joseph Stewart, 29, who was then assigned to the Democratic Cloakroom, was charged with driving faster than reasonable or prudent and was taken before Bridgeville magistrate Hattie Sylvia.

RELEASED

He was released on bond for trial in the Court of Common Pleas in Georgetown, Del., on July 27. On that date a Georgetown lawyer entered a plea of guilty for Mr. Stewart and he was fined $15 plus court costs—a total of $41.35.

Yesterday, a former employe of Mr. Baker's told The News that he had also driven the Senate Lincoln to the Carousel Motel "on several occasions."

He said he never carried passengers to the motel but that "Mr. Baker asked me several times to take supplies down there and I did."

The Senate for some years has provided expensive automobiles, and the gas to run them, for several non-elected Senate officials, including the Majority and Minority secretaries, the Sergeant-at-Arms, the Senate secretary and the Senate doctor.

For several years Mr. Baker's car has borne District tags that cannot be traced because records of them are in a locked "security file."

The General Services Administration says cars in this file are supposed to be operated for "undercover or investigative" purposes.

Mr. Baker and other Senate officials told The News they don't know how his tag number got on the hush-hush list.

$150 WITHHELD

Earlier this week a former Senate page boy said Mr. Baker withheld a total of $150 from his pay for three months "to help Mr. Stewart along" after he was recalled to active duty with the Air Force during the Berlin crisis.

And yesterday, still another former Senate employe admitted that Mr. Baker kept him on the pay roll for four months while he was in Montana going to college. His pay during that time came to almost $2000.

Mr. Baker said he did hold back the $150 but "can't remember" who got the money. He was "not available" for comment on the second case.

The court action which brought Mr. Baker sudden prominence was started last month by Capitol Vending Co. of Washington.

Capitol president Ralph Hill charged that Mr. Baker, his law partner Ernest C. Tucker and North American Aviation Corp. consultant Fred B. Black Jr. of Washington, conspired to get Melpar, Inc. and Silas Church to cancel Capitol's contract.

CHARGES

The suit alleges that Mr. Baker has a financial interest in the Serv-U Vending Co., whose vice president is Mr. Tucker.

Serv-U, in turn, has acquired an estimated $3.5 million in contracts with North American since Serv-U was formed 19 months ago.

Melpar, an electronics manufacturer, also does business with North American.

Mr. Baker and his partners sold the Carousel to Serv-U last February and he and his wife received promissory notes for $290,000 for their share.

A short while later the Bakers and Serv-U signed as borrowers of $746,000 on the motel property.

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THE WASHINGTON POST
Thursday, Oct. 5, 1963

FBI Probes Vending Machine Firm Linked to Senate Aide

By Laurence Stern
and Jack Landau
Staff Reporters

The FBI has begun looking into operations of a fast-rising vending machine firm, the Serv-U-Corp., that is doing more than $3.5 million in business annually in Government-supported aerospace plants.

Although the FBI refused to comment on the case, it was learned that Federal agents have started investigating transactions of Serv-U, a firm with which Senate Majority Secretary Robert G. (Bobby) Baker has heavy financial ties.

Baker and his wife, Dorothy C. Baker, are recipients of $290,000 in promissory notes from Serv-U, according to verified documents. The Bakers are also on record as having co-signed as borrowers, along with Serv-U, a $748,000 mortgage loan from a Baltimore financial institution.

In another development, it was learned yesterday that Baker's youngest brother, Charles N. Baker, is on Serv-U's payroll at its Inglewood, Calif. headquarters office. The 24-year-old brother of the Senate official graduated in 1962 from Guilford (N. C.) College.

Declines Comment

Reached by telephone yesterday morning, the younger Baker declined to discuss his associations with Serv-U. "I'll have to talk to Bobby first," he said.

The younger Baker is listed on government records as an employe of Serv-U. He was employed last year at the Carousel Motel, a lush Ocean City, Md., seaside resort, in which his brother was a part owner until last February.

Baker and his partners sold the motel to Serv-U for a price, indicated on tax stamps, of $1.2 million on February 27. Baker's law partner in a private Washington firm, Ernest C. Tucker, is a vice president and director of Serv-U. The signature of Baker's wife appears on Maryland land records as assistant secretary of Serv-U in two separate transactions, one of them involving a Government loan to the motel.

Began 18 Months Ago

Serv-U, a Delaware corporation, began operations 18 months ago and now holds at least six coveted vending machine contracts in California aerospace plants with contracts with the Government.

Disclosure of the FBI investigation came through at least two visits by FBI agents to Washington area concerns in connection with the vending machine inquiry. Neither the FBI nor Justice Department normally comment on pending investigations.

Serv-U and Baker were named in a civil suit last Sept. 9 for damages resulting from the loss of a vending machine contract at Melpar Inc., of Arlington, a subcontractor of the North American Aviation Co. Also named as a defendant in the suit was Fred J. Black, Jr., a part-time consultant for North American.

The suit was filed by the Capitol Vending Co., which served the Melpar plant until last week when its contract was terminated by Melpar officials. Melpar officials said the vending contract produces gross sales of $300,000 yearly. The defendants have until Oct. 18 to answer the suit.

TUESDAY OCT. 1, 1963

Now It's Vending Machines

EXTENSION OF REMARKS
OF
HON. H. R. GROSS
OF IOWA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, October 1, 1963

Mr. GROSS. Mr. Speaker, the Des Moines (Iowa) Register of recent date printed a story by Sarah McClendon, a Washington newspaper correspondent, concerning the activities of one Robert G. Baker, who apparently is operating a lucrative vending machine business while on the taxpayers' payroll at a salary of more than $19,000 a year.

The story as it appeared in the Register follows:

Now It's Vending Machines
(By Sarah McClendon)

WASHINGTON, D.C.—A civil suit for damages concerning vending machine service to a defense subcontractor has set off a widescale investigation of Robert G. Baker, secretary to the Democratic majority leader of the U.S. Senate.

Baker is a protege and close personal friend of Vice President LYNDON B. JOHNSON.

VENDING CONTRACT

The suit was filed in U.S. District Court by Ralph Hill of Washington, president of Capitol Vending Co., Inc.

Hill alleges that Baker negotiated with Melpar, Inc., a defense subcontractor, to award Hill the vending machine contract for Melpar, then took monthly payments from Hill from April 1962, through July 1963, for securing the contract.

Then, the petition asserts, Baker notified Hill that if Hill did not sell the outstanding stock of his vending machine company to Baker's Serv-U Corp., a vending machine company operating in California, Baker would arrange to terminate the Melpar contract.

In answer, Hill filed suit for $500,000 damages.

The suit alleges that Baker and two codefendants are stockholders in Serv-U Corp., which now has contracts with North American Aviation Corp. plants at various California locations.

One codefendant is Fred Black, described by a North American spokesman as "not an employee, but a part-time consultant" on public affairs and congressional activities who advised on Washington [illegible]

[illegible] stockholder in Serv-U Corp.

Hill's petition alleges that Black is a stockholder in Serv-U Corp. and "is employed in the District of Columbia for the purpose of securing contracts from the U.S. Government on behalf of North American Aviation Corp."

The petition further asserts:

That Hill believes Baker was "able to interfere with the outstanding agreement between Capitol Vending and Melpar" because "Baker was able to, and did, represent to defendant Fred Black that he was in a position to assist in securing contracts for North American Aviation Corp."

"That as partial return for the services performed by defendant Fred Black and defendant Robert G. Baker, North American Aviation Corp. entered into an agreement to permit Serv-U Corp. to install vending machines in its plants in California.

"That defendant Fred Black and defendant Robert G. Baker assisted in securing contracts between Melpar, Inc., and North American Aviation Corp.

"That in partial return for these services, Melpar, Inc., has agreed to enter into an agreement with a vending machine operation in which defendants Fred Black and Robert G. Baker have a financial interest."

Another codefendant is Ernest O. Tucker. He is alleged to have assisted and counseled in the foregoing activities. He is the law partner of Baker in an office at 2000 P Street NW., Washington.

Baker came to Washington from Pickens, S.C., a son of an extremely poor family. He became a Senate page and rose to his present position during the time when LYNDON B. JOHNSON (Democrat of Texas) was majority leader of the Senate.

REMAIN CLOSE

Baker and JOHNSON have remained extremely close. When JOHNSON left the office to become Vice President, Baker remained in his post under JOHNSON's successor, Senator MIKE MANSFIELD, Democrat, of Montana.

Baker appears on Senate payrolls as receiving $19,811.72 annually. His wife, Dorothy,

THE WASHINGTON POST
Friday, Sept. 27, 1963

Baker Friend Is Indicted As Tax Cheat

Consultant Linked To Vending Machine Contract Suit Here

By Jack C. Landau and Laurence Stern
Staff Reporters

Fred B. Black Jr., Government contact man for the North American Aviation Co., is under indictment for evading payment of $165,000 in back Federal taxes from 1956 through 1959.

Black is a co-defendant with Senate Majority Secretary Robert G. (Bobby) Baker Jr. in a vending machine contract influence suit filed here in U. S. District Court.

The industrial consultant, who likes to talk about his close association with top Washington political figures, asked recently that the tax fraud indictment be dismissed on grounds that Federal investigators prejudiced a Kansas City grand jury.

Black complained that the government tried to convince the jurors that he spent money improperly on entertaining government officials and on gambling.

Black serves as an independent adviser to North American in Congressional and executive agency matters. He said he performs similar services for the AVCO Corp., a major electronics contractor with the Defense Department. In a recent interview at his sumptuously appointed Sheraton-Carlton Hotel suite, Black described the warm[th] of his friendship with Baker.

"Bobby Baker is one of the finest friends I have," said Black. "But in all the years I've known him, he has never helped me procure any contract."

The vending machine influence suit charged that Black conspired with Baker and another associate to cancel a Capitol Vending Co. contract at Melpar, Inc. of Falls Church. Melpar is a subcontractor of North American Aviation.

The Capitol Vending Co. of Washington filed the influence suit two weeks ago. Defendants were Black, Baker, the Serv-U Corp. of Washington and its vice president, Ernest C. Tucker, who is Baker's law partner.

Baker and Tucker denied this claim as well as an allegation by Capitol that it paid Baker $5000 in commissions for "securing and retaining the contract."

The tax indictment against Black charged that he should have paid taxes of $247,785 on a total income of $431,914 for the years 1956 through 1959. Instead, according to the indictment, he paid taxes of $142,138 on a reported income of $283,927 during the four-year period.

The April, 1963 indictment charges that the returns were jointly filed for Black and his wife for the years 1957, '58 and '59 and for him individually for 1956. Black said that they were prepared by an accountant, James C. Muskrat of Joplin, Mo., who was hired by his attorney, Ralph Baird also of Joplin.

Black's attorneys asked that the indictment be dismissed on a number of grounds, including a claim that Muskrat was ill when he testified before the grand jury. There was also a complaint that the accountant's testimony violated the privilege of attorney and client.

Black's attorneys also claim that improper questions had been asked of the witnesses. In a motion to dismiss the indictment, Black's attorneys stated:

"The defendant has been told by some of the witnesses who appeared before the grand jury that the questions posed to them did not and could not be possibly related to the tax liability of the defendant but appeared to be designed to convince the grand jury that the defendant spent money improperly on entertaining officials, on gambling, etc."

Other papers filed by Black's attorneys in answer to the indictment state that Black told his lawyers that witnesses who testified before the grand jury stated informally that they were asked about entertainment of government officials—and gambling by Black.

Black is being represented here by Bert B. Rand and Hans A. Nathan.

The vending machine company law suit said that Baker, "as Secretary to the Senate Majority, was able to and did represent to . . . Black that he (Baker) was in a position to assist in securing contracts for North American Aviation Corp."

In the interview Black said: "Mr. Baker is one of the best friends I have. I think he's a bright boy with a future."

Here in Washington, Black has operated Blyco Corp., a firm that helps its clients deal with Federal procurement officials. It has a suite of offices at 1730 K st. nw.

Blyco is a Missouri corporation which began operations in the District in 1961. Black is president, treasurer and director.

Another director is Dr. James C. Walsh of 730 24th st. nw., who is also treasurer and a director of the Serv-U Corp., which was named as a defendant in the vending machine influence suit filed by Capitol Vending.

Walsh acknowledges having attended several directors' meetings of Blyco but said he has "not been active in its management." The physician described himself as a "close

Aviation Consultant Figures in 2d Case

D. C. Man Faces Tax Trial Here

By JULIAN HORRISON

A Washington aviation company consultant, Fred B. Black Jr., will be tried in District Court here on criminal charges that he attempted to cheat the Government out of more than $105,000 in income taxes during the late 1950s.

Mr. Black is also a co-defendant with Senate Majority Secretary Robert G. (Bobby) Baker in a $300,000 suit brought against them earlier this month by a local vending machine firm whose president claims the two men conspired to cancel his lucrative contract with Meipar, Inc., of Falls Church.

Mr. Black, of 4054 32d Terrace nw., is a consultant for North American Aviation Corp., which does business with Meipar.

He operates the firm of Blyco Corp., 1730 K st nw, which is chartered to engage in "public relations, sales and management research and representation."

In the tax case, he was indicted by a Federal grand jury in Kansas City, Mo., last April on four counts covering his tax returns from 1956 to 1959.

The indictment alleges that in 1956 he stated his income was $21,970 when it was actually $73,155.

In 1957, the indictment says, he filed a joint return with his wife claiming an income of $30,346 when his actual taxable income was $114,527.

In 1958 and 1959, it says, he reported incomes of $74,372 and $106,338 when his actual income for those years was $129,093 and $125,138.

Taken together, the indictment says Mr. Black tried to defraud the Government of nearly $105,000 in taxes during that period.

Mr. Black succeeded in having the charges against him transferred from Missouri to the District Court because, he said, he no longer makes his legal residence in Joplin.

Neither the tax case nor the one involving him and Mr. Baker have had trial dates set by the Court here.

Both men have denied allegations in the case brought against them by Capital Vending Co. president Ralph Hill that they used influence to get Meipar to cancel Capital's contract.

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Washington Post - Sept. 22, 1964

Vending Machine Industry

Loan accepted a $748,000 mortage from Serv-U on the land and the motel. Although the Bakers had deeded away their interest in the motel, both signed as borrowers with Serv-U. Mrs. Baker also signed as assistant secretary of Serv-U.

Firm Organized in '61

Serv-U made its corporate debut on Dec. 22, 1961, at Wilmington, Del. It issued 10,000 shares of stock at $1 each.

In its 1962 report Serv-U reported gross assets of $930,979.

Three months after it was formed, Serv-U won its first major account, the Inglewood, Calif., plant of North American. The contract grossed an estimated $1.5 million yearly in vending machine sales. Serv-U replaced the Automatic Canteen Co., of America which was the sales leader of the vending machine industry last year.

When Serv-U stepped into the North American plant, Serv-U bought 300 on-location used machines owned by Automatic Canteen. These machines were described as security in a public notice of a loan to Serv-U granted by Fidelity National Bank and Trust Co. of Oklahoma City, according to Vend Magazine. Vend said Robert S. Kerr Jr., son of the late Oklahoma Senator, was listed as a director of the bank in a 1961 report.

Serv-U then won vending machine contracts at two plants of the Northrop Corp., in Ventura and Anaheim, with a combined gross sales of $700,000 annually. The two plants were previously served by Automatic Retailers of America, a firm with Philadelphia headquarters, that had served Northrop for more than a decade.

In June Serv-U replaced Interstate Vending Corp. of Chicago, as vending machine contractor for the Space Technological Laboratories of Thompson-Ramo-Wooldridge in Los Angeles, according to Vend Magazine. Another North American contract worth an estimated $1.5 million in yearly sales was picked up by Serv-U last month in a Los Angeles area plant. This contract was lost by Automatic Canteen.

Melpar Franchises Cited

The law suit against Baker in District Court here dealt with Melpar, Inc. vending franchises which changed hands three times in the past 18 months—from Macke Vending Corp., to Capitol Vending, to Interstate.

The suit was filed by Capitol Vending of 23 I st. ne., against Serv-U, Baker, Tucker and Fred Black, a North American consultant in Washington. The suit asked $300,000 damages for loss of its contract with Melpar.

The suit claimed that Baker was in a position to assist in securing lucrative contracts for North American.

Black, Baker and Tucker denied the allegations.

Baker did say that he spoke to a friend in Melpar to permit Capitol to bid on the contract in March, 1962.

Fee Payment at Issue

Ralph Hill, the president of Capitol, said in a sworn statement that Capitol had paid Baker a total of $5000 in monthly fees for Baker's services in obtaining the contract. Baker denied receiving the payments.

Melpar's president Edward M. Bostick explained that Interstate was retained to replace Serv-U in both vending machines and the cafeteria.

Bostick said that Capitol was not equipped to handle both operations.

Bostick said that Baker, whom he described as a "friend of mine for years," recommended Interstate. He also acknowledged that Baker approached him last year in behalf of Capitol.

"I was asked by Mr. Baker if someone else might bid on it (Melpar's contract)," recalled Bostick. "I agreed, as I would with any friend. We received a substantially larger amount of money from Capitol."

Bostick said that his company never had any dealings with Serv-U.

When first informed of the suit, Baker said:

"Me get a contract for North American? I couldn't get a contract if my life depended on it. I've never got a contract through influence or used influence to get a contract for anyone. Who in the world would I talk to?"

The Evening Star
WASHINGTON, D. C.
D. 258,167 - S. 313,112

SEP 13 1963

Vending Machine Suit Names Senate Official

A key Senate aide has been accused, in a civil suit filed at United States District Court, of helping a vending machine firm in which he held stock oust another firm from a contract.

The suit, filed by attorney David Cartiner, charged Robert G. (Bobby) Baker, secretary to the Senate Democratic majority, with "malicious interference" with a contract.

Mr. Baker, 34, who was Lyndon Johnson's chief floor lieutenant when the Vice President was Senate majority leader, is one of four defendants named in the suit.

The others are Fred Black, Jr., listed at 4614 Fifty-second terrace N.W.; Ernest C. Tucker, listed at 2000 P street N.W., and Serv-U Corp., listed at the same address as Mr. Tucker.

Had Meipar Contract

The suit was brought by Capitol Vending Co., Inc., whose office was listed on court papers at 23 I street S.E. The contract involved was alleged to have been between it and Meipar, Inc.

According to the suit, Mr. Baker had helped Capitol Vending obtain an agreement for installation of its vending machines at the Meipar plant in Falls Church.

The suit said Mr. Baker had been paid $250 a month by Capitol Vending from April, 1962, through March, 1963, and $450 a month from April, 1963, through July, 1963.

However, the suit continued, Mr. Baker "at a time unknown to the plaintiff" became a stockholder in Serv-U. Mr. Black and Mr. Tucker were listed as Serv-U stockholders or officials.

Tried to Buy Stock

The suit charge that Mr. Baker, in March, 1963, told Capitol Vending that Serv-U wished to buy outstanding Capitol stock, and, unless it was sold, "he would arrange to terminate" Capitol's contract with Meipar.

When Serv-U failed to obtain the stock, the suit alleged, the defendants "conspired maliciously to interfere with the outstanding agreement between plaintiff and Meipar, Inc."

The suit said the purpose of the alleged conspiracy was "to secure the installation of vending machines on Meipar's premises by a corporation in which they had a financial interest."

According to the suit, a series of related business dealings involving the defendants, Meipar, an aviation company and the Serv-U firm led Meipar to terminate its contract with Capitol.

Bought 100 Machines

The suit said that the defendants arranged to buy about 100 vending machines and store them in Bladensburg "preparatory to installing them" at the Meipar plant.

Meipar, the suit alleged, on August 28 advised Capitol Vending it would terminate its contract with Capitol in 30 days. The suit contended the action was a result of activity of the defendants.

Capitol Vending has asked $100,000 in compensatory damages in its suit and $100,000 in punitive damages for alleged "malicious interference" by the defendants with its Meipar contract.

Mr. Baker, through his lawyer, yesterday denied the allegations in Capitol's suit.

He said he is informed Meipar, after cancelling its vending machine contract with Capitol, now has a contract with Interstate Vending Corporation, of Hartford, Conn.

Mr. Baker said that neither he nor any of the other defendants in the present suit, as far as he knows, "has any interest whatever" in the Hartford firm.

Arthur C. Weid, executive vice president of Meipar, said Meipar has had no negotiations with the Serv-U firm over installation of its machines at the plant.

Mr. Weid said the contract with the Capitol Vending firm was terminated for ordinary business reasons growing out of consolidation of both cafeteria and vending machine service at the Falls Church plant with the Interstate firm.

VENDING MACHINATIONS

Bobby Baker Denies All Charges in Suit

By JULIAN MORRISON

Former Senate Majority Secretary Robert G. (Bobby) Baker yesterday formally denied that he took $5600 in payoffs for negotiating a vending machine contract last year between a local firm and a Falls Church defense contractor.

Mr. Baker, 35, also denied Capitol Vending Co.'s charges that he later "conspired maliciously" with a North American Aviation Corp. consultant and an official of another vending company to cancel Capitol's contract with Melpar, Inc., of Falls Church.

Mr. Baker's denials came in answer to a suit filed in District Court here last month by Capitol President Ralph Hill, who seeks $300,000 damages.

The consultant, Fred B. Black Jr., and Mr. Baker's law partner, Ernest C. Tucker, who is also vice president of the Serv-U Vending Co., filed similar denials.

It was this suit that triggered the newspaper publicity and led to Mr. Baker's resignation from his $20,000-a-year Capitol Hill job recently.

Newspaper accounts of Mr. Baker's widespread activities both on and off Capitol Hill also spurred investigations into his affairs by the FBI, the Internal Revenue Service and a Senate committee.

The Capitol Vending suit charges that Mr. Baker "negotiated" with Melpar on behalf of Capitol, received $5000 for his services, then tried to buy out Capitol on behalf of Serv-U.

When that failed, the suit alleges, Messrs. Baker, Tucker and Black conspired to have Capitol's Melpar contract terminated.

It also claims that, by using his influence, the former Majority Secretary obtained lucrative vending contracts for Serv-U with North American, and for Melpar with North American.

Mr. Baker denied that he is a Serv-U stockholder. Last February, however, he sold his luxury Ocean City motel to Serv-U, then—with Serv-U — borrowed $748,000 on it from a Baltimore savings and loan association.

Mr. Black also denied that he is a Serv-U stockholder or [illegible] employed here to get Government contracts for North American.

He heads the public relations and management research firm of Blyse Corp. at 1730 K-st. nw., and currently is under indictment charging that he tried to cheat the Government of more than $105,000 in income tax.

In his answer he charged that Capitol's suit "contains irrelevant, impertinent and scandalous matter."

Mr. Black's answer intimates that he doesn't know Mr. Baker but "is informed that at the present time, the defendant Baker is not employed as the Secretary for the Majority at the United States Capitol."

Mr. Tucker admitted he is an officer of Serv-U and it does business with North American but denied all other charges in the suit.

Serv-U Corporation itself did not file an answer by last night's deadline by agreement between its newly-retained lawyer, David G. Bress, and Capitol attorney David Carliner. It's answer will be filed by next Tuesday.

The defendants yesterday filed notice that they will take depositions — statements under oath preceding a trial— from Capitol stockholders and officials, including Mr. Hill, its president, and stockholder Clayton Gasque, the staff director of the House District Committee.

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SEP 12 1963

Senate Official Is Named in Influence Suit

By Jack Landau
Staff Reporter

A large food vending machine company has said a prominent Senate staff official accepted $5600 in business fees to negotiate a $360,000 private contract and then acted in favor of a competitor.

The assertion was made in a suit filed in the United States District Court by the Capital Vending Co., Inc., of 21 I st. se., which itself was the subject of questions involving the possible use of congressional influence to secure contracts two years ago.

The key defendant in the suit is Robert G. (Bobby) Baker, Secretary for the Senate Majority and a former assistant to Vice President Johnson when the latter was Majority Leader. Baker flatly denies all the allegations.

Capital's president, Ralph H. Hill, in a sworn complaint, alleges his company paid Baker $5600 "for his services in securing and retaining a contract" which permitted Capital to place its machines in plants operated by Melpar, Inc. of Falls Church.

The suit says Baker accepted commission-type payments of $250 a month from April 1962 through March 1963 and then received $450 a month from April of this year through August. The vending machine contract with Melpar started in March 1962 and was cancelled by Melpar as of this Sept. 22.

Last March, Capital said, Baker attempted to persuade Capital to sell out to a competing company, the Serv-U Corp. of 2000 P st. nw. When that failed, the complaint said, Baker "conspired maliciously to interfere with the outstanding contract between Melpar and Capital."

Baker, when informed of the suit, denied he had ever accepted any payments from Capital, that he acted as Capital's agent to secure the contract or that he had conspired to influence Melpar to break it.

Baker said he had only asked a friend in Melpar to permit Capital to bid on the contract which it won in March 1962.

The contract, Hill said, was for 130 food vending machines which grossed $120,000 a year before taxes and which represented an investment of $100,000 to his company.

Baker's codefendants in the suit are the Serv-U Corp.; its vice-president and secretary, Ernest C. Tucker, an attorney with offices at 2000 P st., nw., and Fred Black, an independent consultant associated with the North American Aviation Corp. of 4064 32d terr., nw.

The suit alleges that Tucker and Black conspired with Baker to persuade Melpar to cancel the contract and then to arrange that Serv-U obtain it.

Tucker denied the alleged conspiracy and said that neither Baker nor Black have any financial interest in Serv-U nor made any representations for Serv-U to Melpar.

Black made a similar denial and said he had no interest in Serv-U nor had he approached Melpar for Serv-U.

Arthur Weld, vice president of Melpar confirmed his company had cancelled the month-to-month contract with Capital. He said Melpar had contracted both its vending machine operation and its cafeteria services out to the Interstate Vending Corp. of Hartford, Conn.

Weld said Melpar had no negotiations with Serv-U over installing their machines in Melpar plants.

In addition, Tucker said Serv-U has made no arrangements with Interstate to take over the Melpar contract.

Tucker said Serv-U has food vending machines in plants of the North American Aviation Corp. in California and has some real estate transactions here but no vending machine operations.

He confirmed that Serv-U has about 100 machines stored in Bladensburg but he denied Capital's allegation that they are destined for installation in the Melpar plant.

The suit demands compensatory damages of $200,000 and punitive damages of $100,000 for the defendants' alleged interference with Capital's contractual relations.

Capital's charges of improper influences are similar to the implications raised in August 1961 when Clayton Gasque, Capital's secretary,

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The Washington Post
WASHINGTON, D.C.
P 68,128 S 98,128

was said to have intervened in a dispute over Capital's placement of machines in District buildings.

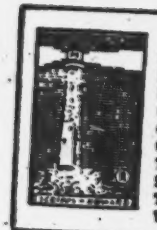
At that time Gasque, then Secretary to Rep. John L. McMillan (D-S.C.), chairman of the House District Committee, was said to have called on behalf of Capital Vending which was complaining of unfair treatment at the Municipal Center, a District official said.

Gasque, now assistant clerk to the House District Committee, said yesterday that he is no longer an official of Capital Vending. He said he still owns the 20 shares of stock in the firm.

Hill said that, outside of two machines in the Municipal Center, he has no machines in any District or Federal buildings. He said he has about 1100 vending machines in the District which gross about $1.4 million before expenses and which represent an investment of $700,000.

The 1963 annual report of Capital Vending, filed with the District, lists the following officers: Hill of 4201 Cathedral ave. nw., president; Frank Sharpe, 7012 Western ave., Chevy Chase, vice president and director; Teddy P. Collier of Aberdeen, Md., director; Stanley Lee, 23 I st. se., secretary; and John F. Gorrisen, 2144 California st. nw., treasurer.

Serv-U, in its application to do business in the District filed on March 22, 1963, lists Eugene A. Hancock, president and director; Tucker, director, vice president and secretary; James C. Walsh, director and treasurer, and Lorraine H. Tucker, assistant secretary all listed at 2000 P st. nw. Tucker said that Hancock resigned recently and is now in Miami.



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The Washington Daily News

CITY EDITION

THURSDAY, FEBRUARY 6, 1964

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Weather

Rain, cool today; high 51, low 32. Cloudy, cooler tomorrow.

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Can't Get Fair Trial Indicted Associate of Bobby Baker Charges

(Page 2)

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2—THE WASHINGTON DAILY NEWS, THURSDAY, FEBRUARY 6, 1964

Baker Tie-In Unfair, He Contends

Post-Election Trial for Black Is Refused

By JULIAN MORRISON

North American Aviation Corp. consultant Fred B. Black Jr., under criminal indictment on charges of evading more than $165,000 in income taxes, has received so much "notoriety" from the Bobby Baker case that his lawyers, claiming he can't get a fair trial anywhere in the country now, have asked that his case be postponed until after the November Presidential election.

In a District court this morning, Chief Judge Matthew F. McGuire told Mr. Black's lawyers, "It's a lost cause you're espousing. No case is going to be continued until November.

TOO FAR

"This is a stall upon the part of the defendant," he said. "I will not entertain any motion to continue this case until November. That's too far away." He said. The Judge said he would take the file under advisement and set a date himself, and indicated that it would be sometime in the spring.

Mr. Black and the former Senate Majority Secretary are owners of the controversial Serv-U Vending Corp. that holds lucrative contracts with North American, and both are defendants in a civil suit alleging they "conspired maliciously" to cancel a local vending firm's contract with Melpar, Inc., a North American sub-contractor.

DEFRAUD

The Government also has charged Mr. Black with trying to defraud it of more than $165,000 between 1956 and 1959 and his trial was set for Feb. 17.

In their motion for a continuance, Mr. Black's lawyers said that two nationally-known accounting firms have backed out of the case and that "continuous prejudicial publicity in connection with the Bobby Baker case will make it impossible to find an impartial and unprejudiced juror."

Lawyers Bert B. Rand and Hans Nathan said they have collected "more than five pounds of clippings from newspapers thruout the United States reflecting this situation."

WITNESSES

Mr. Rand said he hired the national accounting firm of Peat, Marwick, Mitchell & Co. last fall to make a complete audit of Mr. Black's books because in a case of this type expert "accounting witnesses are the most material witnesses."

But, he said, the firm summoned him to its Chicago office on Dec. 18 to a year and told him it would have to withdraw from the case because "an unforseen conflict of interest had developed."

Mr. Rand said he then contacted a nationally-known New York City accounting firm but, after coming to a tentative agreement to do an audit, it too, backed out because its officials "did not want to be involved as witnesses."

'IMPOSSIBLE'

Mr. Rand said, "I consider it impossible" to prepare Mr. Black's defense "within the next two or three months" because "I have not only had great trouble obtaining the necessary accounting help, but must anticipate further difficulty."

He said such accountants would have to go over "records and transactions in at least 14 cities."

Mr. Nathan claimed the publicity surrounding the Senate Rules Committee probe into Mr. Baker's financial dealings has and will "attempt to associate (Mr. Black) with Mr. Baker, with large financial transactions unrelated to the case, with gambling operations and other matters" tending to prejudice a jury against him.

(Three men with Las Vegas gambling interests have had financial interests in the Serv-U vending firm, the Committee has been told.)

The lawyers noted that a prior request for a delay in the trial, made for technical reasons, had been opposed by the Justice Department.

AGREEMENT

They said they had come to an agreement with Assistant U. S. Atty. Alfred Hantman and Judge George L. Hart Jr., on Jan. 6 that a delay would be granted until April 6 of this year.

But, they said, before the order could be formally issued, Mr. Hantman received a phone call from the Justice Department instructing him not to agree to a postponement.

"Thereafter, the Assistant (Mr. Hantman) was relieved of the assignment in this case and replaced by two Special Prosecutors from the Department of Justice who refuse to consent to a continuance . . .", they said.

DEFENSE

Their preparation of Mr. Black's defense, Mr. Rand said, is further complicated by the fact that "the original accountant for the defendant is to be a witness for the Government and, I understand, has been working closely with the prosecution."

This apparently is a reference to James U. Mackrat of Joplin, Mo., the former accountant for

Mr. Black's public relations firm, Blyco Co.

Mr. Black moved to the District a year after he organized Blyco in Joplin in 1955. The company's office is at 1730 K-st nw.

His current tax troubles are rooted in what the Government claims are numerous unreported checks from several companies he apparently represented.

The Justice Department has filed a list of 95 checks from eight "sources" totaling more than $158,000 in "unreported income" between 1956 and 1958.

'SOURCES'

These "sources," the Department says, are:

W. E. Darby, of Little Rock, Ark. There is a U. S. Darby Insurance Co. listed in Little Rock.

Jones Brothers Construction Co., a Joplin building contractor.

The Howard Foundry Co. of Chicago, Ill.

M-P Construction Co., a Carthage, Mo., building contractor.

Aeronca Manufacturing Co., of Middletown, Ohio, an aviation firm.

T. W. Braun & Co., identified as a Los Angeles "business counselor."

AVCO Corp., of Stratford, Conn., an electronics defense contractor.

The Pacific Mercury Television Manufacturing Co., later known as Pacific Mercury Electronics, of Sepulveda, Calif.

TAX SUIT

The tax suit claims the Jones Brothers Construction Co. paid Mr. Black more than $10,000 in 1956 and 1958 that he didn't report as income and it says $30,000 of this was paid him during the first five months of 1958.

Howard Foundry Co., the suit says, paid Mr. Black more than $56,000 in 1956, 1957 and 1958; Aeronca paid him $26,000 during the first quarter of 1958. It says AVCO paid Mr. Black $[illegible]00 in 1959; the Braun Co., $4,000 the same year; M-P Construction paid him $9250 in 1957; Pacific Mercury paid $7500 in 1959; and W. E. Darby paid him $7770.50 in 1956.

ALLEGEDLY PAID

A total of $5,823.10 of the money allegedly paid by the Howard Foundry Co. was in checks made out to the Sheraton Carlton Hotel where Mr. Black maintains a lavish suite. Most of these checks were for $.00 each.

The Government claims Mr. Black didn't report any of this.

WASHINGTON STAR 2/7/64

Black Seeks Delay in Tax Fraud Suit

Fred B. Black, jr., a co-defendant with former Senate Majority Secretary Robert G. (Bobby) Baker in a vending machine contract influence suit, today asked for a continuance in his separate income tax fraud trial because of "a flood of daily prejudicial publicity."

Chief Judge McGuire of United States District Court said he would not change the scheduling of the trial today, adding that he would take the motion for continuance under advisement with any additional documents attorneys may want to file to support the request.

Mr. Black, a consultant with offices at 1730 K street N.W., is scheduled to go to trial February 17 on charges of filing fraudulent income tax returns. The indictment against Mr. Black charged that he should have paid taxes of $247,785 on a total income of $431,914 for the years 1956 through 1959. Instead, the indictment said, he paid taxes of $142,138 on a reported income of $283,027 during the four-year period.

Mentioned in Papers

Attorneys for Mr. Black today asked Judge McGuire to continue the trial "at least" until November 17. They said the defendant is being mentioned in the papers and on television as a "tax cheat," "lobbist," and "an associate of Las Vegas gamblers." They charged that he also is being identified as a close friend and business associate of Mr. Baker.

Attorneys said it would be impossible to find a juror in this case who has not been subjected to daily and "highly prejudicial comment" on the defendant. They added that Mr. Black has been told he will be questioned by the Senate Rules Committee in the near future and that newspaper and television accounts of his testimony will cause additional prejudice about the time the income tax trial is scheduled to get under way.

Auditing Firms Back Out

Mr. Black's attorneys further argued that the defendant had engaged a national public accounting firm to assist him in the trial. But they said the firm withdrew from the case after investigations were begun into Mr. Baker's activities. They said a second accounting firm declined to aid Mr. Black because they "did not want to be involved as witnesses."

Defense attorneys also submitted 50 documents which included newspaper and magazine stories about Mr. Black's associations with Mr. Baker in support of their claim that prejudicial publicity would be expected to continue through November.

Mr. Black is one of four defendants, including Mr. Baker, named in a civil suit filed by a vending firm. It charges that the defendants used improper influence in interfering with a private contract.

What Gives Here?

WASHINGTON NEWS
2/10/64

ABOUT a month ago, the Senate committee investigating the tangled affairs of Bobby Baker, a former Senate employe, made public testimony by Donald B. Reynolds, an insurance agent.

Among other things, Mr. Reynolds testified he had given President Johnson, then a senator, a $583 hi-fi set and had placed $1200 in advertising with the Johnson family's radio station in Texas. All after he had sold Mr. Johnson a $100,000 life insurance policy, with the help of Bobby Baker.

Since, a nationally syndicated column has been published saying that Mr. Reynolds was not a creditable witness. It purportedly was based on Government files covering Mr. Reynolds' time in the Air Force and in the consular service—some years back. Identity of the person or persons who "leaked" the allegedly derogatory information from the secret files concerning Mr. Reynolds was not given.

Now Sen. John J. Williams, who sparked the Baker investigation, charges the Johnson Administration is trying to "intimidate" witnesses. Mr. Reynolds says two FBI agents "interviewed" him since his testimony.

There have been no denials that Mr. Reynolds did write the $100,000 insurance policy, purchase the hi-fi set and place the radio advertising. (Mr. Johnson said he thought the hi-fi came from Baker.)

The question is: Why are stories reflecting on this witness now being planted by unidentified persons in the Administration—if this is the case?

The Senate committee has a long way to go before it wraps up the Baker case. It will be calling many more witnesses. Any witness who thinks he might be intimidated if he tells what he knows is not likely to be co-operative. In this sense, the investigation can be jeopardized. The committee should get to the bottom of this.

Newark Star-Ledger, Newark, N. J. 1-26-64

83a

CURTAIN ALREADY UP 4 MONTHS

Baker scandal in for a long run

By ERWIN KNOLL
Star-Ledger Washington Bureau

WASHINGTON — About four months have passed since the curtain went up on Washington's long-run melodrama, "The Bobby Baker Affair."

It's quite a show.

Since the cast is large and the plot complex, a rundown on some of the principal characters may help those who came in late.

Robert G. Baker—the title role. His name was Bobby Gene when he came to Washington 21 years ago as a 14-year-old Senate page boy from backwoods Pickens, S.C. Since then he has acquired a more formal signature, the nose straightened by plastic surgery, a law degree, an influential Senate post—secretary to the Democratic majority at $19,600 a year, with collateral duties including the treasurership of the Democratic senatorial campaign committee; a penchant for intricate deals involving real estate, vending machines, insurance, banking, beef imports, motels, a cemetery and a travel agency, among others, and a good deal of money —no one is sure how much.

Baker is cast as a good provider (he lives with his family in a $125,000 house in the exclusive Spring Valley section of Washington) and as a thoughtful boss (his attractive young secretary occupies a modern townhouse near the Capitol that Baker bought in the fall of 1962).

In speech (rapid, lapel-twisting, more Southwestern than Southern in accent) and dress (conservative dark suits, white silk ties) Baker tends to mimic his two principal [illegible] tors—the late [illegible] of Oklahoma, an [illegible] whose bank [illegible] Baker's ventur[illegible] majority leader Lyndon B. Johnson, who backed Baker for the majority secretary's job in 1955.

One curious aspect of the show: though Baker has the starring role, it's not a speaking part—at least so far. He hasn't said a word in public since he resigned the Senate job Oct. 7 when attention began to focus on his business ventures.

Before that, however, he did deliver a few good lines. One was his boast that "on any issue I have at least 10 senators in the palm of my hand." Another was his frequent advice to con-

Cast of Characters

Robert G. Baker
A nose job and a snow job

Carole Tyler
Permanent memories

Lennox McLendon
Enjoying himself

Gertrude Novak
Bouffant memory

Sen. Everett Jordan
Removes picture

gressional newspapers "You go along to get along."

A real show-stopper was his reply when someone asked whether he had used influential contacts to further his private enterprises. "Who would I ever call," Baker asked?

• • •

NANCY CAROLE TYLER—another silent role, but definitely a decorative asset to the show. A small-town girl from Tennessee, a former beauty queen, she worked in Baker's office and still lives in his townhouse. Though she left the congressional payroll a day after Baker did, Miss Tyler is permanently memorialized on Capitol Hill—she posed, a few years back, for a new version of the Capitol's old statue of "peace." Her constant companion these days: a chic miniature poodle.

• • •

RALPH HILL — a speaking part. Or rather a singing part, accompanied by whistle blowing. Like Baker, Hill is a young, bright, dapper South Carolinian making his way in the nation's capital. Hill raised the curtain on the Bobby Baker affair last September when he filed a $350,000 civil damage suit against Baker. He claimed that the Senate aide had helped him to obtain a lucrative vending machine contract with a nearby defense firm, had received $5,600 from Hill for his services, but had then thrown the contract to another firm.

Baker denied the charges, but Hill's complaint—and his assertion that Baker was a principal shareholder in a California-based vending firm called Serv-U — upset the Senate and led to Baker's resignation.

• • •

DON B. REYNOLDS — another talkative South Carolinian, who moved in the Baker set. Reynolds, an insurance man whose firm lists Baker as vice president, told Senate investigators he paid Baker $15,000 over the years for bringing in such business as $200,000 in life policies on President Johnson and the brokerage fee for a $14 million performance bond covering the construction of the new District of Columbia Stadium.

Reynolds said he received unsolicited, interest-bearing notes from Baker covering the payments. The stadium was built by Democratic party fund-raiser Matt McCloskey, who resigned a few days ago as U.S. ambassador to Ireland.

It also [illegible] of a Florida shopping center deal involving Baker and other congressional figures and bankrolled by the Teamsters' Union. And he testified that he called Baker when a woman needed help to obtain an abortion.

• • •

GERTRUDE NOVAK—An attractive blond with a bouffant hairdo and a memory to match. Mrs. Novak, an employe of the Senate Small Business Committee, and her late husband, Alfred, were involved in several not-so-small business ventures with Baker—among them the plush Carousel Motel on the Maryland shore, which was billed as "a hideaway for the advice-and-consent set."

She gave Senate investigators a detailed accounting of this and other enterprises, and told, as did Hill, of mysterious exchanges of large sums of cash in Baker's office.

• • •

ERNEST C. TUCKER—Baker's friend, law partner, business associate. He organized the Quorum Club on Capitol Hill, a "watering hole" for lobbyists, legislators and their aides. He shows on the books as an officer of the Serv-U Corp. and other Baker enterprises, and kept the books for the Carousel.

B. EVERETT JORDAN — a kindly, slow-speaking North Carolina Democrat, who is presiding over the Senate Rules Committee's investigation of the Baker case.

His one firm rule for the committee inquiry: "We're not investigating senators."

• • •

GEORGE A. SMATHERS — one of the senators not being investigated. This suave Floridian has conceded that he gave Baker and Scott Peek, his former administrative assistant, a chance to invest in "a highly profitable land venture because they were both "trying to raise a large family on a limited income."

Peek, who left Smathers' staff last year to become a Miami public relations man, has been linked in testimony with several other Baker ventures. His secretary, Mary Alice Martin, formerly shared Baker's townhouse with Miss Tyler.

• • •

LENNOX POLK McLENDON —A self-styled "North Carolina country lawyer," who was Sen. Jordan's choice to act as chief counsel for the investigation. He is 73 and is addressed by conducting a vigorous and his World War I rank of major. He has surprised some (and perhaps disappointed others) by thorough inquiry.

• • •

OTHER CHARACTERS are in the wings, and may be due for starring roles before the show is over. Three Las Vegas figures—Edward Levinson, Benny Sigelbaum and Edward Torres—have been identified in testimony as involved in Baker enterprises. Edward M. Bostick, president of the defense firm that figures in Hill's vending suit, appeared at a closed session of the Rules Committee and promptly set off a partisan uproar by declining to answer a question about party girls. Fred B. Black Jr., government contact man for the North American Aviation Co. and by his own account one of Baker's "best friends," is under indictment for tax evasion.

And Sen. John J. Williams, the soft-spoken Delaware Republican, who specializes in embarrassing administrations of both parties with disclosures of official wrongdoing, is continuing his own quiet, unofficial investigation.

It was digging by Williams that prompted the official inquiry and led to Baker's resignation. It may be that he will have the final word before the curtain rings down on "the Bobby Baker affair."

But there is no telling now how the show will end. As written so far, the script does not point to a happy finale with all the cast joining hands to sing the closing chorus.

NEW YORK TIMES
12 E SUNDAY, FEB. 9, 1964

THE IMPACT OF BAKER INQUIRY

Image of Democrats Is Endangered By Revelations of the Inquiry

By CABELL PHILLIPS

Special to The New York Times

WASHINGTON, Feb. 8—The Bobby Baker case seems to be running out of witnesses, but it is far from running out of steam.

Among the dozens of persons who have given testimony in secret or open sessions of the investigating Senate Rules Committee are most of those believed to have been the closest associates of the former secretary to the Senate Democratic majority in his sprawling part-time business career.

These have included former partners or associates in a $1 million beach motel, a $3 million vending-machine company, a Washington law practice, a Maryland insurance business, a meat-exporting operation in Haiti, sundry real estate transactions and a mortgage-insurance firm that netted Mr. Baker the bulk of his claimed $2 million fortune.

In addition, the committee has heard from the man who pried the lid off this whole Pandora's box of wheeler-dealer high finance by filing a $300,000 civil damage suit against Mr. Baker last September. This plaintiff charged that Mr. Baker had taken $5,000 in commissions from him to obtain a vending-machine franchise in a nearby plant, and then turned around to get the franchise canceled in favor of another firm.

All of this took place, of course, in a span of just under 10 years while Bobby Baker was on the Senate payroll. He resigned his $19,000-a-year job as majority secretary last October rather than explain his sudden rise to fortune and notoriety to his superiors. The Senate voted an investigation to find out whether he had abused his position or misused his influence in furtherance of his moonlighting activities.

So far, Mr. Baker has not been called, nor has he been placed under committee subpoena. The chairman, Senator E. Everett Jordan, Democrat of North Carolina, said earlier this week that he did not know when he would be called. This, plus other evidence, indicates that the committee contemplates being in business a good many more weeks.

Not Yet Covered

But what additional ground is going to be plowed is uncertain. There are some known facets of Mr. Baker's career that, as far as can be learned, the committee has not yet touched.

Among these are the full extent of his relations with a group of men, including Edward Levenson and Ben Siegelbaum, who are identified with hotel and gambling interests in Las Vegas, Nev.

Another unexplored avenue concerns the extensive loans Mr. Baker and some of his associates negotiated through the Fidelity National Bank and Trust Company of Oklahoma City. A year ago, Mr. Baker reported a personal indebtedness of $300,000 to this bank, of which his friend, the late Senator Robert S. Kerr, was a principal stockholder. A part of this loan was used by Mr. Baker to team with Messrs. Levenson and Siegelbaum to buy a substantial interest in another bank in Tulsa, the Farmers and Merchants.

As of a week ago, committee sources admitted that they had made no on-the-spot check of these transactions.

Another connection of Mr. Baker's that seems not to have been fully covered is that with the North American Aviation Company. His vending firm, the Serv-U Corporation, holds contracts said to aggregate more than $2 million with several North American plants in California. North American's Washington consultant, Fred Black Jr., is a co-defendant with Mr. Baker in the $300,000 civil-damage suit. The two men have also been linked in official testimony in several other enterprises.

But as far as can be learned, neither Mr. Black nor any other official of North American have been asked by the committee to explain their dealings with Mr. Baker.

The slow pace of the committee's investigation—it has been in progress almost four months in which it has held six public sessions and published three transcripts of selected executive hearings—and its failure to follow up on what seem to be promising leads has created a good deal of dissatisfaction among members of the Republican minority. They suspect a go-slow attitude on the part of the majority and a tendency to pick the investigative terrain with an eye to the political hazards involved.

Late this week the Republican members were working over the draft of a letter they plan to send the chairman setting forth these grievances and demanding a more forthright approach.

EXHIBIT B

Senators Included

One apparent stumbling block to a full and complete investigation was cleared earlier this week. In response to a question raised on the Senate floor by Senator Albert Gore, Democrat of Tennessee, Mr. Jordan was persuaded to agree that his committee's investigative jurisdiction covered members of the Senate as well as Senate employes. In the past, the chairman has answered reporters' inquiries on this point by saying, "We aren't investigating Senators."

This attitude had caused some lack of confidence in the committee's intentions. For it has become apparent to most close observers of the Baker case that the brash and adventurous young majority secretary could hardly have clawed his way up the financial ladder totally without assistance.

He thrived mainly on the influence of his position—whom he knew in the Senate and what others presumed he could get done because of his knowledge. His Senate friendships, of which he had a great many, are unquestionably a part of his "success" story and consequently, it is reasoned, a relevant part of the inquiry.

This is one of the sharp political connotations of the Baker case that have the Democrats worried. There is some circumstantial evidence and a good deal of gossip linking several Democratic Senators quite closely with some of Mr. Baker's private business affairs. There is talk, also, but no known evidence so far, of a more piquant nature involving party girls and assignations.

Stopping Rumors

It is safe to say that such rumors will not be stilled until the committee states that it has looked into allegations of this sort. So far, it has not done so. Or if it has, it has not admitted the fact under repeated questioning by reporters.

The worst fears of some Democrats were realized two weeks ago when the name of President Johnson cropped up in printed testimony as the recipient of an expensive stereo phonograph as a gift from Mr. Baker in 1957. In the same testimony, it was alleged that a Johnson aide, Walter Jenkins, had exacted a "kickback" from an insurance agent who had placed a large insurance policy on the then-Senator's life.

The President and his aide have both denied any wrongdoing in these two transactions. But the damage is done, in a political sense anyway. The Republicans now have the Bobby Baker case to equate with that of Sherman Adams during the Eisenhower Administration and a chance to revive their potent slogan of 1952—"Let's clean up the mess in Washington."

However, the Baker case is resolved as far as Mr. Baker individually is concerned, the political shadow it casts is a long one—and it may get longer. For, regardless of any personal retribution that may be exacted, a tawdry and depressing aspect of official life in Washington has been exposed that the public will not soon forget. It has been a confidence-destroying spectacle and the Democrats are its inescapable victims.

WASHINGTON POST
April 16, 1964 (Page C-3)

Baker Associate Black Goes on Trial For Evading $91,000 in U.S. Taxes

By Jack C. Landau
Staff Reporter

Fred B. Black Jr., a vending machine business associate of former Senate Majority Secretary Robert G. (Bobby) Baker, went on trial yesterday on criminal charges of evading $91,000 in Federal income taxes from 1956 through 1958.

As soon as the case opened in U.S. District Court, the defense moved for a mistrial. The request was denied by Judge John J. Sirica.

The mistrial motion was based on opening statements by Justice Department attorney William O'Connor who told the jury:

"Who is Fred B. Black Jr.? He is a man who represented that he knows his way around Washington and can get things done . . . and can put them (his clients) in touch with people who can get things done."

Defense attorney Warren Magee argued that the prosecutor's statements were "prejudicial and had no relation to the trial."

"What is at issue here," the defense attorney insisted, "is whether he filed correct returns."

"Our witnesses," answered the prosecutor, "will testify what they paid Black for . . . for knowing people in Washington."

"This is an effort to prejudice the jury," repeated the defense attorney who accused the Government lawyer of stating: "Here is a man who went around peddling influence."

"That is not what I said," answered O'Connor. "My statements cover the broad statements that will be made by all the witnesses who will say that they paid Mr. Black to get things done around Washington — the particular nature of his services will be outlined."

"There are certain witnesses," added O'Connor, "who will testify as to payment to Mr. Black in regard to certain Government agencies."

"In view of the past history of this case," said Magee, "I move for a mistrial."

Judge Sirica denied the motion but asked the Government not to imply that Black was "peddling influence."

Most of the exchanges took place outside the jury's presence.

On the motion of Justice Department attorney John Burke, Judge Sirica dismissed one count of the indictment that accused Black of evading $14,000 in taxes in 1959. Burke said the unavailability of witnesses necessitated the move.

WASHINGTON POST
April 17, 1964 (Page B-2)

Gave Black $7700 for Influence In SEC, Insurance Head Tells Trial

By Jack C. Landau
Staff Reporter

An insurance company executive testified yesterday in a U.S. District court trial that he paid Fred B. Black Jr. $7700 "to find out what was causing the delay" in his application with the Securities and exchange Commission and to "push matters along."

The executive, William E. Darby, president of the National Old Line Insurance Co. of Little Rock, Ark., gave the testimony at Black's $31,000 income tax evasion trial.

He said he paid Black $1000 in May, 1956, after Black wrote to him:

"The $1000 was the commitment I made that I had to keep."

Darby declined to specify the matter he had pending before the SEC. An agency spokesman said the only record it has of Darby in 1956 was a registration statement his insurance company filed to sell $2 million worth of stock to the public.

The spokesman said Darby made the application to sell 100,000 shares in November, 1955, and withdrew it in November, 1956.

The SEC spokesman said the application was later withdrawn but that the SEC approved three subsequent applications by the insurance company to sell Darby's stock in 1959, 1960, 1962.

Darby testified he sent Black three checks in May, 1956, for $1176, $3800 and $2794 as reimbursement for expenses Black said he incurred on behalf of Darby's business interest before the SEC.

Darby said: "I had a discussion with Mr. Black on a matter in which I was personally interested . . . Mr. Black was a public relations man. He had an office in Missouri and an office in Washington, D.C. I told him that I had a matter pending before one of the Government agencies . . . and I thought he could be of some assistance."

"There was an arrangement between Mr. Black and myself," Darby added. "Mr. Black would attempt to find out what was causing the delay."

The two Government prosecutors, John P. Burke and William O'Connor, are attempting to show that Black failed to include the payments from Darby as income in his 1956 income tax form.

The defense claims that Black did not have to list these payments as personal income because they were for expenses.

Black is accused of listing an income in 1956 of $31,975 and of paying a tax of $8363 when, the Government claims, he should have listed his income as $73,155 and paid a tax of $34,870.

THE WASHINGTON DAILY NEWS, THURSDAY, APRIL 14, 1966—13

$91,000 Is Issue

Black Tax Trial Opens

The Government yesterday opened its income tax evasion case against Fred B. Black Jr. —former Senate Majority Secretary Bobby Baker's vending machine company partner—by politely calling him an influence peddler.

But it dropped one of the four indictments against the wealthy Washington contact man who was fired earlier this year by North American Aviation Corp. after his connections with Mr. Baker became known.

Mr. Black is now on trial on charges that he tried to cheat the Government out of $91,000 in income taxes in 1956, 1957 and 1958.

1959 RETURN

The dismissed indictment concerned his 1959 income tax return and the Government obtained the dismissal from District Judge John J. Sirica on the grounds that witnesses in California were not available.

Mr. Black, a back-yard neighbor of Lyndon B. Johnson family when Mr. Johnson was Vice President and living in Spring Valley, is charged with failing to report income from several Midwestern companies the Government says he represented here.

It described him as "a man who has represented that he knows his way around Washington and knows how to get things done," a description that brought angry objections from his lawyers.

Warren Magee told the court that "in an effort to prejudice the jury they're saying 'here's a man who goes around peddling influence.'"

Judge Sirica sent the jury out of the courtroom, told the Government attorney to watch his language and then warned both sides in the case that he wouldn't allow any "bickering" during the trial.

The Government says its case shouldn't last more than a week but the defense claims it could run on for a month.

Mr. Black's lawyers earlier this year sought to have the trial postponed because, they claimed, he had received so much bad publicity as a result of the Senate Rules Committee investigation of Mr. Baker that he couldn't get a fair and impartial trial.

BAKER PROBE

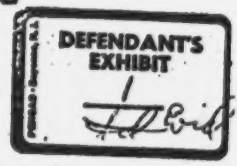
Mr. Black was frequently mentioned during the Rules Committee probe because of his partnership with Mr. Baker in the Serv-U Vending Co.

Serv-U obtained lucrative vending contracts with North American immediately after it went into business shortly over two years ago.

Mr. Black had been on North American's payroll—reportedly at more than $150,000 a year—until after his participation in Serv-U came to light.

THE WASHINGTON DAILY NEWS
Wednesday, April 15, 1964

Who Authorized Charge Account in the Senate Restaurant for Hoffa's Union? Sen. Williams Wants to Know



2—THE WASHINGTON DAILY NEWS, WEDNESDAY, APRIL 18, 1962

Who Catered Baker Motel Affair?

Teamster Food Tab on Hill Hit

By JULIAN MORRISON

Jimmy Hoffa's Teamsters Union ran up a bill of more than $4000 in the Senate Restaurant last July and August and Sen. John J. Williams (R.,Del.) wants to know who authorized the charge account and why.

Sen. Williams is preparing to go on the Senate floor to question why the Teamsters had the unusual privilege and to criticize "the advisability or the propriety of the Senate Restaurant's having extended any credit to Mr. Hoffa."

Sen. Williams also accused the restaurant management of lying when it reported to him earlier this month that it hadn't catered the lavish grand opening party for 300 VIP's at Bobby Baker's Carousel Motel near Ocean City, Md.

OCEAN CITY

On the contrary, he said, the restaurant chef "and several of the management" were sent to Ocean City for the July, 1962 opening party.

"With them they carried food, table linens, serving trays, a considerable number of cooking utensils, warming pans, pots, pans, etc.

"All this property of the Senate Restaurant was loaded in cars and transported to Ocean City, Md., for use at the grand opening of Mr. Baker's Motel."

Sen. Williams was turned down in his request for the names of the senators or Senate employes—who authorized the Teamster charge account.

SEN. WILLIAMS

SEN. BYRD

'SPONSORED'

He was told only that 10 senators "sponsored" the Teamster luncheons and that "beyond that explanation I am advised that no further information is available to me as an individual Senator."

The Washington Daily News was also refused access—six weeks ago—to the restaurant records.

They are in the custody of the Senate Rules Committee's Restaurant Sub-committee, headed by Sen. Robert Byrd (D.,W.Va.).

He told the News he did not consider that the restaurant bills were public records and said that in no event would he supply the names of any senator who might have acted as a sponsor for the Teamster affairs.

TRIGGERED PROBE

Altho the full Rules Committee has apparently ended its investigation into Mr. Baker's outside business activities, Sen. Williams—who triggered the probe—said he was sure the Committee, "after checking into these transactions can give us a more complete report."

Since the Delaware Republican previously has said he had turned over to the Committee any information he had concerning Mr. Baker, the presumption is that the Committee knew of the restaurant involvement in both the Teamster and Carou-

sel cases and decided against checking them further.

The restaurant bill shows that the Teamsters were charged $1,956.99 in July of last year and $3,191.94 in August. The total bill came to $5148.93.

The bill was not paid until Dec. 12, 1963.

CAUSE OF DELAY

Replying to Sen. Williams' query, Capital Architect J. George Stewart said the delay in paying the bill "arose out of the refusal of the restaurant Accounting Office to furnish certain documents which the Union's auditors felt they needed for compliance with the Landrum-Griffith Act." He did not elaborate.

The Teamster bills for "luncheons" during the two months were far and away the largest run up by anyone, including senators and employes who are authorized to charge meals.

At about the time Sen. Williams' interest in the Teamsters' charge account became known, and several weeks prior to The News' request to examine the records, Sen. Byrd acted to put a stop to such practices.

On Feb. 8, he wrote his fellow senators that "within the past month it has come to my attention" that the restaurant had "tolerated a practice of extending credit to certain organizations. . ."

AGAINST PRACTICE

He said he felt that "this practice should not be continued"... and ordered the restaurant management "to extend credit only to United States senators or officers of the Senate, beginning Feb. 17, 1964."

Sen. Williams was particularly critical of the use of the restaurant's food, equipment and personnel at the Carousel opening.

The opening was attended by nearly 300 top Washington political figures, including the then Vice President, Lyndon B. Johnson.

Most of the guests were taken to Ocean City in a fleet of D. C. Transit buses.

Altho Sen. Williams did not mention it, the whisky for the party was provided by Glenn Troop, a long-time friend of Mr. Baker and the lobbyist for the United States Savings & Loan League.

Several former high officials of the League are now associated with the controversial Mortgage Guaranty Insurance Co. of Milwaukee, Wis., whose stock Mr. Baker began to accumulate before it was offered to the public.

BASIS

It formed the basis of a personal fortune he once estimated as being in excess of $2 million.

One of the guests at the Carousel opening recalls the buffet menu included friend chicken, roast beef, sliced turkey, three types of salad and a variety of seafood.

Sen. Williams said "the only reason which I can think of to explain why this does not appear on the books of the Senate Restaurant is that this service was either rendered free, at Government expense or at a very low rate which they do not wish to reveal.

"Otherwise, why deny that the services and facilities were used?"

NO CRITICIZING

He said he wanted to make it clear he wasn't criticizing the chef and other restaurant employes who served at the motel opening.

"I am sure that they felt that they had no choice, but I do criticize and question the propriety of those who ordered them to go and take with them much equipment and supplies of the Senate Restaurant.

"The duties of the Senate Restaurant are to furnish food in the Capital and Senate Office Buildings, for which services they must charge regular rates.

"But the Senate Restaurant is not supposed to operate a catering service to a private party in Ocean City, Md., for Mr. Bobby Baker or for any other public official, and when such services are rendered, either in whole or in part at the taxpayers' expense, it is even more subject to criticism," he said.

WASHINGTON EVENING STAR
April 15, 1964 (Page 1)

SENATE CATERING SERVICE

New Favor for Bobby Baker?

By CHARLES D. PIERCE
Star Staff Writer

Senator John J. Williams, Republican of Delaware, called today for an investigation into why equipment and supplies from the Senate restaurant were transported to Ocean City, Md., for the opening in 1962 of Robert G. Baker's Carousel Motel.

The Delaware Senator told the Senate he has learned that the chef of the Senate restaurant and several members of its management "were sent to Ocean City for the week end to take care of Mr. Baker's guests who would be attending the opening of the Carousel."

"With them they carried food and table linens, serving trays, a considerable number of cooking utensils, warming pans, pots, pans, etc.

"All this property of the Senate Restaurant was loaded in cars and transported to Ocean City, Md., for use at the grand opening of Mr. Baker's motel. To what extent the food furnished was prepared in the Senate restaurant or to what extent Mr. Baker paid for these services I do not know. . . ."

Teamster Credit Questioned

The Delaware Senator said he also had inquired about a report that the Teamsters Union had been allowed to open a charge account in the Senate restaurant and, as of August, had run up a $4,248.93 bill.

Senator Williams said that he had asked the Senate restaurant management whether the restaurant had provided a catering service for Mr. Baker, former secretary of the Senate majority, at the Carousel.

A reply by J. George Stewart, Capitol Architect, submitted for the record by Senator Williams, denied that the Senate restaurant had acted as a caterer.

However, Senator Williams said he believes this reply "is not quite correct."

Not on Books

He added that the only reason he can think of to explain why the services provided Mr. Baker's motel do "not appear on the books of the Senate restaurant is that this service was either rendered free, at Government expense, or at a very low rate which they do not wish to reveal. Otherwise, why deny that the services and facilities were used?"

The Delaware Senator said he wants to "make it clear I am not criticizing the personnel of the Senate restaurant who went to Ocean City, Md., on that date to assist in taking care of Mr. Baker's guests at the grand opening of the Carousel.

"I am sure that they felt that they had no choice; but I do criticize and question the propriety of those who ordered them to go and take with them such equipment and supplies from the Senate restaurant.

"The duties of the Senate restaurant are to furnish food in the Capitol and Senate Office Buildings, for which services they must charge regular rates."

The Senator insisted that the Senate restaurant "is not supposed to operate a catering service to a private party in Ocean City, Md., for Mr. Bobby Baker or for any other public official, and when such services are rendered, either in whole or in part, at the taxpayers' expense, it is even more subject to criticism."

In answer to questions about the Teamsters, Mr. Stewart said the charges for the luncheons of the Teamsters Union were paid in full on December 12, 1963.

The Capitol Architect said

See BAKER, Page A-8

BAKER

Continued From Page A-1

"the delay in payment of these charges arose out of the refusal of the restaurant accounting office to furnish certain documents which the union's auditors felt they needed for compliance with the Landrum-Griffin Act.

"As soon as these differences were resolved, the account was promptly paid. All of the luncheons were sponsored by individual Senators numbering 10 in all."

Mr. Stewart enclosed in his reply to Senator Williams a copy of a letter from Senator Byrd, Democrat of West Virginia, who is chairman of the Senate Rules Subcommittee on the restaurant. The letter said that, while credit has been extended in the past to certain organizations, Senator Byrd feels this practice by the restaurant should be discontinued.

The letter said Senator Byrd had asked the Senate restaurant management in February to extend credit only to United States Senators or officers of the Senate.

Senator Williams said he feels sure the Senate Rules Committee will check into the Teamsters Union bills at the restaurant and services provided for the Carousel Motel so that a more complete report on these transactions can be provided.

A 2 Monday, April 20, 1964 THE WASHINGTON POST

The Harris Survey

Prestige of Senate, Not Johnson, Seen Chief Baker Victim

By Louis Harris

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In the view of most Americans, the Bobby Baker case has cast a shadow of a doubt over President Johnson's ability to handle corruption in Washington.

But in itself, at this reading, it is unlikely that the Baker episode will prove to be conclusive at the polls next November. In fact, the prestige of the Senate appears to have suffered more than that of the President as a result of the investigation of the business dealings of the former Senate aide.

As the revelations of Baker's financial activities unfolded, public confidence in Mr. Johnson's ability to keep corruption out of Government went down rather precipitously. He still holds a bare majority, however, among a carefully drawn cross section of the American people asked to rate him positively or negatively on this aspect of his job:

JOHNSON RATING ON KEEPING CORRUPTION OUT OF GOVERNMENT

	April	Feb.
	%	%
Positive	51	69
Negative	49	31

The Bobby Baker case has been widely followed by nearly nine out of every ten voters. Despite the public attention the case has received, the vast majority of Americans do not feel that the case has drastically altered their view of either the Presiden or the Senate.

When questioned directly on the subject, better than seven out of ten persons said the Bobby Baker investigation had not changed their opinion of Lyndon Johnson:

BAKER CASE AND LBJ

Total Nation

	%
Think less of LBJ	14
Think more of LBJ	3
Makes no difference	73
Not sure	10

Where the Baker case made a difference in these circumstances, among one in six voters, Mr. Johnson has been hurt by it. But most people are not prepared to condemn the President over it alone.

A somewhat larger number of people are openly critical of the Senate over the Baker episode:

BAKER CASE AND THE SENATE

Total Nation

	%
Think less of Senate	21
Think more of Senate	5
Makes no difference	69
Not sure	14

One in five voters felt the Baker case cast no credit on the Senate. The generally expressed feeling was that the atmosphere of the Nation's highest legislative body should have been kept more clear of such business deals. The dignity of the Senate has been sullied to some degree.

Rather than shocking the public about the Senate, the Baker episode has confirmed rather long-standing cynicism about the Nation's top legislators. For, when asked directly if Congress tends more to represent the interests of the people or special interests working for private gain, people come down on the side of suspecting Congress of the latter by five to three:

CONGRESS vs. SPECIAL INTERESTS

Total Nation

	%
Represents special interests	50
Represents public interests	30
Not sure	20

The Bobby Baker case does not now appear to be the kind of exposé that will bring down the Government now in power in Washington. But clearly the whole affair has not enhanced the public's confidence in the men who on almost any day are wont to claim for the Senate the encomium of "the world's greatest deliberative body." Obviously the public has quite a different view from this.

WASHINGTON POST
April 18, 1964 (Page A-16)

Sen. Williams Calls on Justice Dept. To Begin Prosecution in Baker Case

By Laurence Stern
Staff Reporter

Sen. John J. Williams (R-Del.) said yesterday that it is now time for the Justice Department to begin criminal prosecution in the Bobby Baker case.

"We already have laws that have been violated and what we need now is enforcement," the Delaware Republican told an American Society of Newspaper Editors panel on "Morality in Washington."

Williams cautioned against the tendency to adopt what he called "flowery codes of ethics" to govern future conduct in the legislative branch without taking action against past wrongdoings.

Asked by one editor whether he thought the Baker case was "dead," Williams quipped that as a farm boy he had learned "that you never get rid of a cat until you bury it. And this cat has not been buried yet."

The Delaware Republican, one of the Senate's most energetic investigators, said he is not satisfied that all the ramifications of the case have been explored.

"Congress has never been reluctant to investigate the executive branch," he said. "Here we are dealing with improprieties in our own backyard—and we have a greater responsibility to see this investigation through than any other one."

The Justice Department has been investigating the Baker affair since last September but has been extremely guarded in its comments on the current status of the case.

There have been private explanations that the Department has no desire to bring a frivolous case before a grand jury and thereby risk being accused of perpetrating a whitewash.

Williams himself told the editors that he had suggested that the Justice Department "lay off" the case until the Senate Rules Committee had an opportunity to develop the facts.

"But I think it is now time when the Department of Justice should or could appropriately move in," he asserted.

WASHINGTON EVENING STAR
April 18, 1964

Vigorous Baker Probe Advocated by Williams

By HAYNES JOHNSON
Star Staff Writer

Senator John J. Williams, the moving force in the Bobby Baker investigation, says the inquiry must be pursued vigorously to remove doubts that "someone high in the Government" has been protected.

The Delaware Republican urged that the investigation of the activities of the former secretary to the Majority be continued until it results in "full and complete disclosure." He said this must be done without regard to any official, "no matter how high an office he holds."

He told the American Society of Newspaper Editors yesterday that he doesn't believe additional laws or codes of ethics are needed. But he said it was for the Justice Department to begin prosecutions in the case.

"We have adopted many flowery codes of ethics," he said. "I would not oppose additional laws, but what we need more than anything else is the will to enforce those laws."

Participated in Panel

The Senator participated in a panel discussion on "Morality in Washington." Others on the panel were Senator McClellan, Democrat of Arkansas, and chairman of the Permanent Investigations Subcommittee; John Strohmeyer of the Bethlehem (Pa.) Globe-Times, and John Seigenthaler of the Nashville Tennessean.

Mr. Strohmeyer and Mr. Scigenthaler were investigative reporters before becoming editors. Mr. Seigenthaler also served as Attorney General Kennedy's administrative assistant.

Senator Williams, in recounting the Baker case, said Mr. Baker was given "ample opportunity to give his side of the story" before the formal investigation began. Instead, he said, Mr. Baker resigned his position as secretary to the Senate majority.

Mr. Seigenthaler suggested it would be "naive to assume that corruption in Government is limited to the executive branch." Senator McClellan, in describing the role of investigating committees, said: "I think these committees pay for themselves a million times over."

Viet Nam Discussed

The editors also heard David Halberstam of The New York Times discuss events in South Viet Nam. Mr. Halberstam, who until recently was a reporter there for The Times, said:

"We're down to our last chance in Viet Nam and even now we have few alternatives."

George E. Reedy, a former reporter named President Johnson's press secretary last month, told the editors of his concept of the job.

"I still have a deep belief that news is something that has to be gathered," he said.

In response to a question on "management of the news," Mr. Reedy said: "It is obviously morally wrong for anyone to achieve a monopoly over news . . . As long as we have competition and that very healthy scepticism (of reporters) I am not worried about any effort to manage the news."

The editors named six directors.

They are: Creed C. Black, Executive Editor of the Wilmington (Del.) News-Journal; Lawrence S. Fanning, Executive Editor of the Chicago Daily News; Norman E. Isaacs, Executive Editor of the Louisville (Ky.) Courier-Journal and Times; Robert C. Notson, Managing Editor of the Portland (Ore.) Oregonian; Michael E. Ogden, Executive Editor of the Providence (R. I.) Journal-Bulletin, and Miles H. Wolff, Executive Editor of the Greensboro (N. C.) Daily News.

WASHINGTON EVENING STAR
April 18, 1964

$30,000 Paid to Black In 1958, Witness Says

A secretary-treasurer of a Missouri construction firm has testified the company paid out $30,000 in 1958 to Fred B. Black, jr., for expenses in connection with his "pre-bid investigations" of two space projects.

The witness, Miss Vera Alberta Walters, of the Jones Brothers Construction Co., Joplin, Mo., yesterday testified in Mr. Black's $91,000 income tax evasion trial in United States District Court. The defendant, a consultant in Washington, is charged with filing fraudulent income tax returns for the years 1956 through 1958.

Miss Walters said Mr. Black was expected to share a part of the profit if her company obtained contracts with the firm producing the Bomarc missile system (Boeing Co.) and with Rocketdyne, a North American Aviation division involved in aerospace work.

When Justice Department Attorney John P. Burke asked the witness what Mr. Black actually did for the construction company, she answered, "I think you'd better talk to Mr. Jones." She added that the firm in 1956 paid Mr. Black another $10,160 for "promotion" expenses in connection with three other projects.

Another witness for the Government was Lawrence E. Bernard, an attorney with offices at 1730 K street N.W. Until recently, he was the secretary of the Blyco Co., Mr. Black's public relations firm of the same address. He said he turned in his resignation at Mr. Black's request about two weeks ago.

Mr. Bernard said he could not produce certain records of the firm because they were not in his file when he checked it. He told Mr. Burke that Mr. Black and his secretary were the only other persons who had access to the file besides himself. He said his office was next to those of Blyco and connected by a door.

Mr. Black, a co-defendant in a separate civil case here, involving former Senate Majority Secretary Robert G. (Bobby) Baker, has maintained he cannot get a fair trial at this time in Washington because his name has been linked to the stories of the Baker investigation.

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A—4 SATURDAY, APRIL 18, 1964

Integrity

Don Reynolds, the insurance man who has moved in and out of the Bobby Baker picture, made a statement on a recent radio appearance which may be of some significance. He said that early in the Baker business he received a telephone call from George Reedy, who is now White House press secretary.

Mr. Reedy, according to Mr. Reynolds, "contacted me in my downtown office and informed me that he had had the President [Mr. Johnson] in contact with him and that possibly it would be better for me to refrain from making any statements at all." When asked by reporters about this, Mr. Reedy said: "I'll never have any comment on anything Don Reynolds says about anybody."

For our part, we wish Mr. Reedy had seen fit to comment. We wish he had said that Don Reynolds was wrong, that he didn't know what he was talking about, or even that he was just a plain liar. As matters stand, Mr. Reedy admits nothing—nor does he deny anything.

The one certain fact is that Don Reynolds, whether Mr. Reedy thinks his remarks are worth commenting on or not, is primarily responsible for blowing the lid off the Baker affair. And the look-the-other-way treatment from Mr. Reedy, who may not have had much choice in the matter, doesn't alter the facts.

From the beginning, we have urged that the Senate, and especially the Senate Rules Committee, should not stop short of freeing this scandal. But the Democrats on the committee are ready to give up the chase and head for home. It is for this reason, especially, that we hope the Republican minority members of the committee will return a report which will gild no lilies. Otherwise, we think that Senator Miller, Republican of Iowa, was speaking the truth when, concerned with the integrity of the Senate, he said: "The question of whether any of Mr. Baker's alleged improprieties involved the Majority Leader, now the President, will probably never be answered." This may be a shocking comment in its implications. But we think it is consistent with the extraordinary efforts to hush-up so many aspects of the Baker case.

WASHINGTON POST "OUTLOOK"
Sunday, April 19, 1964

The Race at Midseason

* * *

Mr. Johnson articulates far better in small groups than in public; he lacks John F. Kennedy's flair on television. Republicans think they can hurt him by calling him a "wheeler-dealer" and by pointing to his long association with former Senate Secretary Bobby Baker or by talk of his fast driving or off-the-cuff comments in public. And a debacle in Viet-Nam, always a possibility, or somewhere else would intensify the GOP charge that the President is weak on foreign affairs. Probably he is most vulnerable on a personality basis, but here much depends on what kind of a contrast is offered by the Republican candidate.

WASHINGTON POST
April 24, 1964

Tax Chief Charges Baker Signed Aide's Name to His Return

Caplin Cites Lab Test in Report to Rules Committee

By Laurence Stern
Staff Reporter

Robert G. (Bobby) Baker signed his accountant's name to 1961 Federal tax returns, Internal Revenue Service Commissioner Mortimer Caplin told a Senate committee yesterday.

Caplin disclosed the finding, which he said was based on FBI laboratory tests, in a report to Senate Rules Committee Chairman B. Everett Jordan (D-N.C.)

"These facts will be further considered by the Service as they relate to Mr. Baker's tax affairs," Caplin told Jordan. Both the IRS and the Rules Committee have been conducting investigations into Baker's numerous business activities while he served as Senate Majority Secretary.

Criminal Probe Bared

And in a separate development yesterday, the House Appropriations Committee made public the first breakdown by the Justice Department of criminal investigations that are under way in the Baker inquiry.

Justice officials reported that they are "conducting an important investigation into the affairs of Robert G. Baker . . . to ascertain the possibility, conflict of interest bribery, fraud against the Government and conspiracy."

This admission — in sharp contrast to the Department's close-lipped position on the Baker inquiry—was made during testimony by Criminal Division chief Herbert J. Miller at a Jan. 27 House Committee hearing on his Department's appropriations. The transcript of this hearing was released yesterday.

Until now Justice acknowledged no more than that it was looking into the case. Press spokesmen in the Department would not elaborate on the reference to the Baker investigation. It evidently caught them by surprise. Miller's only reaction was "no comment."

Until Caplin's announcement yesterday the question of who signed the name of the tax accountant, Milton L. Hauft, on Baker's Federal tax returns was one of the most piquant mysteries of the Senate investigation.

Hauft told the Rules Committee last month that his name had been forged on the returns. He said he made the discovery when he was called to the Internal Revenue Service for questioning about Baker's returns. Until yesterday the identity of the signer of Hauft's name was not disclosed.

Caplin said the question was cleared up as the result of "detailed laboratory analysis" by the FBI including comparisons between the handwriting of Hauft and Baker.

The IRS chief asserted at the same time that the investigation disclosed there was no substitution of Baker's returns once they were in IRS custody.

The possibility of such a substitution was suggested by Sen. Hugh Scott (R-Pa.), a Rules Committee member.

But Caplin insisted yesterday that investigation debunked such speculation.

"The results of this investigation," he wrote Jordan, "has eliminated any doubt that existed as to the handling of the Baker returns after they were received by the Internal Revenue Service."

Jordan, in a statement that accompanied Caplin's report, said "the report shows very clearly that any charges made about improper handling of the tax returns were completely unfounded and untrue and I think the public has a right to know of the true facts regarding the matter."

Sen. John J. Williams (R-Del.), who initially proposed the Senate investigation into Baker's private business affairs, cited the Caplin letter in a floor speech yesterday and declared that "this is one instance where the Department of Justice can take appropriate action."

Both Williams and Hauft used the word "forgery" in alluding to the episode. Caplin did not use the word in his own report.

WASHINGTON POST
April 24, 1964 (Page A-3)

Black's Tax Man Tells of Secrecy

By Jack C. Landau
Staff Reporter

The tax accountant for Fred B. Black Jr. testified yesterday that he was supplied with no information regarding $106,000 in checks which the Government says Black fraudulently failed to report on his tax returns.

The accountant, James C. Muskrat of Joplin, Mo. said that the information for Black's tax returns was supplied by Black, by vouchers and receipts, or by Black's attorney in Joplin.

Muskrat conceded on cross-examination that some of the vouchers could have been misplaced, lost or overlooked.

The accountant testified in Black's $91,000 tax evasion trial before U.S. District Court Judge John J. Sirica.

Black, Washington public relations man, is accused of failing to report $139,000 in income and failing to pay $91,000 in taxes from 1956 through 1958.

The Government prosecutors, John P. Burke and William O'Connor, started yesterday's questioning of Muskrat by asking about Black's 1958 returns.

Muskrat said Black reported a total taxable income of $74,372 and paid a tax of $35,662. Among the expense deductions which Muskrat listed for Black was $11,008 in entertainment.

Muskrat said he also made out tax returns for Black's public relations firm, the Blyco Corp., for 1958.

There were five employes who drew total salaries of $15,253. Other expense deductions on the Blyco return, Muskrat said, listed $39,220 for hotel and other expenses which included $27,473 for a suite in the Sheraton-Carlton Hotel.

In reviewing his handling of Black's tax returns, Muskrat said that he filled in the 1956 and 1957 returns without ever seeing any information on the $82,600 worth of checks that the Government says Black should have reported.

In 1958, Muskrat said he set up a general ledger for Black and posted entries regularly. He said he had information about $33,500 in checks in 1958, but had no knowledge of an additional $23,500 the Government contends should have been reported.

He said he posted the $33,500 as income in the ledger but did not post it as income on the tax returns "after discussions" with Black's attorney, Ralph C. Baird of Joplin.

WASHINGTON DAILY NEWS
(April 23, 1964)
'Made Public'

LBJ Moves to Pry Debt Case Facts From AF

By JULIAN MORRISON

President Johnson today said he would "do all I can" to pry out of the Pentagon the details of how the Air Force took over the collection of a $3 million defense contractor's dbt from the Justice Department.

Asked at his press conference if he would order the information released to the press and the public — which the Air Force has flatly refused to do —the President said:

"I will do all I can to see that every bit of the information that can be ade public is made public.

"When I saw that story in the paper, I asked the Secretary to immediately pursue it and to give me the facts on it."

Rep. John E. Moss (D., Calif.), told The Washington Daily News today he will conduct an "immediate" investigation into the Air Force's refusal to discuss the case with reporters.

The money, owed the Government by Howard Foundry Co., of Chicago, was being collected by the Justice Department in 1956 when the foundry hired Fred Black as an agent for a $150,000 fee.

In July, 1957, he wrote company president Frank C. Howard Sr. that he had "successfully completed" his "assignment."

TRIED

Reporters have tried for two days to get the Air Force to say why it took over collection of the debt and how much money, if any, it has recovered.

Rep. Moss, who heads the house "freedom of information" Sub-committee, said "this is information of signifance and the public is entitled to have it."

The Howard Foundry debt deal came to light two days ago in testimony during the Government's $91,000 income tax fraud case against him. It is being tried before Judge John J. Sirica in District Court.

TALKED

Testimony in the trial indicated that Mr. Black, a current business associate of former Senate Majority Secretary Robert C. (Bobby) Baker, talked with Assistant Air Force Secretary C. Dudley Sharp in January of 1956 about the Howard debt case.

The debt arose from the renegotiation of a World War II contract between Howard and the Army Air Force. The Government claimed the foundry made an excessive profit on the contract.

Mr. Sharp, now a Texas businessman, said yesterday he couldn't remember the talk but added that it very well could have happened.

Mr. Howard told the court he hired Mr. Black and agreed to pay him $2500 a month for 60 months if he got the case out of the Justice Department "who didn't understand our problems and were threatening to put us up."

The Justice Department confirmed that the case had been turned over to the Air Force, at it's request, in 1956, about the time Mr. Black wrote his 'mission accomplished' letter to Mr. Howard.

The Air Force's refusal to answer reporters' questions on what's been done with the Howard debt since 1956 may stem from the implication in Mr. Howard's testimony that he felt the Air Force would be more lenient than the Justice Department.

Maj. Gen. E. B. LeBailly, Air Force director of information, told reporters yesterday afternoon—more than 24 hours after their first query—that "I'm talking to my legal people, who are working on it."

He said the case was "back in the Justice Department" and when a reporter told him he was mistaken, he said "Well, we'll try to thrash this out—where our information comes from."

CALLED REPORTERS

Then, two hours after Gen. LeBailly made his comments an Air Force colonel called reporters to say this:

"After a final check, our position is that we're not going to say anything about this as long as it's before the courts."

He said he wasn't even going to admit that it was under Air Force jurisdiction, "not from any personal knowledge of mine, anyway."

The Air Force initially yesterday refused to comment on the Howard case except to admit that it was under its jurisdiction and that it "thought" about $800,000 had been collected.

The Government, meanwhile, continued it's tax case against Mr. Black by hauling out a long list of expense items he ran up in 1956 and 1957.

ADMITS

The Government admits that Mr. Black's deductions for these expenses were imminently proper, but they show that he certainly knew how to entertain.

In 1956, for instance, he gave 36 parties on the East and West Coasts, in Chicago, St. Louis, New York City and New Orleans. Cost: $5070.

He spent $5500 on travel, $1000 on tips and $20,358.34 on hotel rooms (he's maintained a luxurious suite at the Sheraton-Carlton for years).

In 1957, he reported he spent $5 a day every day in the year on tips; $14 a day for cab fares when he was in Washington; and $1000 on "games, fights, races".

A-12 ★★★★ THE EVENING STAR Washington, D. C., Thursday, April 23, 1964

DEFENDANT'S EXHIBIT 3 Mot 4-24-64

Johnson Orders AF to Tell How Black Shifted Contract

By WILLIAM BASHAM
Star Staff Writer

President Johnson said today he has asked the Air Force for the facts on a report that Fred B. Black, jr., a public relations man, managed to get a renegotiation contract sent from the Justice Department to the Air Force.

The President said: "I will do all I can to see that every bit of the information that can be made public is made public. When I saw that story in the paper, I asked the Secretary to immediately pursue it and to give me the facts on it."

Mr. Black is on trial for income tax evasion. Major curiosity still centers around the shifting of of collection responsibility for a Chicago firm's nearly $3 million debt, owed to the Government, from the Justice Department to the Air Force.

Frank C. Howard, chairman of the board of the Howard Foundry Co., has testified in United States District Court that Mr. Black's assignment for the firm in early 1956 was to arrange a transfer of the company's "re-negotiation problem" from Justice to the Air Force. Justice said the Howard firm owed the money to the Government in connection with excess profits it made in contracts during World War II.

A Justice spokesman said the collecting responsibility was shifted to the Air Force in October, 1956, but the present status of the debt is unclear.

Maj. Gen. E. B. LeBailly, Air Force information director, told reporters yesterday that "I'm talking to my legal people who are working on it. . . . It's a pretty intricate thing." He said he could not comment now on how the firm stands with the debt. "We'll try to thrash this out. . . . Let me see what I can find out."

Mr. Howard earlier testified he agreed to pay Mr. Black $150,000 over a 66-month period for arranging the debt transfer. In one of the letters offered into evidence by the Government, Mr. Black allegedly wrote Mr. Howard in January, 1956, that he was meeting a "Mr. Sharp."

Mr. Howard said "Mr. Sharp" was an "undersecretary of the Air Force." Reached by telephone Tuesday in Houston, Tex., former Assistant Secretary of the Air Force Dudley C. Sharp said he knew Mr. Black, but remembered nothing about a meeting concerning the Howard firm.

An accountant who prepared Mr. Black's income tax returns said in court today that he did not place $56,800 in checks paid Mr. Black by two business firms on the defendant's 1958 income tax return.

Mr. Black, charged with evading $81,000 in income taxes for the years 1956 through 1958, is in the sixth day of his jury trial before United States District Court Judge John J. Sirica.

For three solid hours, Justice Department Attorney K. William O'Connor questioned James C. Muskrat, a certified public accountant of Joplin, Mo.

The Government charges that Mr. Black paid $25,682 in taxes for 1958 when he actually should have paid $75,732. The defense claims items not reported in Mr. Black's returns were legitimate expenses.

Mr. Muskrat said checks made out to Mr. Black by the Howard Foundry Co. and the Aeronca Co. of Middletown, Ohio, were "explained deposits," "unexplained deposits" or items he never hear of. He said he didn't enter them on the returns after discussing them with an attorney who served Mr. Black's public relations firm in Joplin.

Yesterday, under questioning by O'Connor, Mr. Muskrat reeled off expenses listed by Mr. Black for the years 1956, and 1957.

They showed that the defendant took as many as 88 business trips in a year; spent more than $20,000 in hotel bills, and paid out some $14,000 in entertainment, tips and taxis. Mr. Muskrat said the items were properly reported to the Internal Revenue Service.

Defense attorneys Bert B. Rand and Warren Magee maintain that all of Mr. Black's expenses were legitimate and did not need to be reported as personal income.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 6a), is reported at 353 F. 2d 885. An opinion of the District Court for the Western District of Missouri on an issue not presented for review is reported at 216 F. Supp. 645. An unreported memorandum opinion of the district court granting a limited continuance is reprinted in Petitioner's Appendix, 1a–3a.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1965 (Pet. App. 6a). A petition for rehearing was denied on January 17, 1966. The petition for certiorari was filed on February 16, 1966.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion in denying motions for continuance, change of venue, and mistrial based on allegedly prejudicial publicity.

2. Whether there was evidence from which the jury could find that petitioner had the specific criminal intent to evade liability for federal taxes.

STATEMENT

Petitioner was indicted in the Western District of Missouri on March 29, 1963. The indictment charged him in four counts with wilful attempts to evade his income taxes for the years 1956, 1957, 1958 and 1959 in violation of Section 7201 of the Internal Revenue Code of 1954 (R. iv, 1–3).[1] On petitioner's motion, under 18 U.S.C. 3237(b), the case was transferred to the District Court for the District of Columbia on July 2, 1963 (R. v, vi). In October 1963 the case was set for trial on February 17, 1964. The trial date was subsequently continued to April 15, 1964, but Chief Judge McGuire denied petitioner's motion for a further continuance until after the national elections

[1] The last three counts were subsequently superseded by a second indictment filed on April 19, 1963 (R. iv, 3–5). The two indictments were consolidated for trial, and the 1959 count was dismissed on the government's motion at the start of the trial (R. x).

Record references herein are to the Joint Appendix in the Court of Appeals (R.), the reporter's transcript of testimony (Tr.), and government exhibits (Govt. Ex.), all of which are part of the record filed in this Court.

in November, 1964 (Pet. App. 1a–3a). The motion urged that the publicity, involving petitioner, attendant on the investigation into the affairs of Robert G. Baker by a committee of the United States Senate prejudiced his right to an impartial jury (R. 23–34). Chief Judge McGuire held that the publicity had not made a fair trial impossible and that the impartiality of each potential juror could be evaluated on *voir dire* (Pet App. 2a).

Following a trial which lasted from April 15, 1964, to May 5, 1964, the jury returned a verdict of guilty on three counts (R. x–xii, 152–153). The district court imposed a sentence of fifteen months to four years' imprisonment and a fine of $10,000 on each count, the sentences to run concurrently (R. 156–157).

The government's proof established that, for the years 1956, 1957 and 1958, petitioner received $140,087.04 over and above the income reported in his returns. The unpaid tax liability on this unreported income amounted to $91,395.00 (R. 198–199, 206–207, 217–218; Tr. 1990–2004). Petitioner admitted the receipt of practically all the sums involved. His defense was (1) that they represented reimbursement for expenditures on behalf of his clients and (2) that, if the receipts constituted taxable income, he lacked the requisite criminal intent since he relied on agents to prepare his returns.

Petitioner described his business as "public relations work" (Tr. 2290, 2292). The unreported income was received from five clients, who employed him for such varied purposes as determining the cause of delay in a

registration proceeding with the Securities and Exchange Commission (Tr. 208), getting leads to classified construction job opportunities for construction firms with prime contractors (Tr. 559, 600), effecting the transfer of a manufacturing company's renegotiation case from the Justice Department to the Air Force (Tr. 673), trying to get a titanium development contract with the Navy (Tr. 726), and acting as consultant to an aero-space firm on future government policy and on the general problems encountered in doing business with prime government contractors (Tr. 832, 838).

None of these clients knew how the unreported payments were spent, and petitioner rendered no accounting to them (Tr. 229, 429, 601, 681, 850). One client, at the request of petitioner's attorney, abandoned a requirement of itemized expense accounting (Tr. 558–559, 433). The clients regarded the payments, variously, as for petitioner's expenses (Tr. 721), reimbursement of expenses (Tr. 220, 558), or his "operating cost" (Tr. 851). Petitioner's testimony (Tr. 2290–2421) did not disclose any particular use of these funds. Checks from clients totalling $46,000 were cashed or negotiated at various banks and hotels and were not reported on petitioner's returns.[2] Checks from clients totalling $7,054.60,[3] were issued directly to hotels at petitioner's instruction

[2] Govt. Exhibits 7A, 7B, 16G, 16H, 16I, 16L, 16–O, 17b, 17d, 17e, 17f, 17h, 17i, 17j, 17–L, 19B, 20A, 20B, 20N, 20S, 20X, 21A, 21E, 21G, 21–I, 21J 21K, 32d–1, 32g–1.

[3] Govt. Exhibits 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23H, 23I, 23J, 23K, 23L, 23M, 15B.

(Tr. 698–699, 748) to pay bills which correspond to specific deductions claimed in petitioner's tax returns (Govt. Exs. 43, 45; R. 296–309; Tr. 404, 938–959, 1342). The hotel bills were supplied to petitioner's accountant for deduction purposes (Tr. 928), but petitioner did not tell his accountant that the bills had been paid directly by clients (Tr. 1340). In general, it was shown that petitioner reported those receipts of which the government had notice because clients had reported payments (on Form W–2 or Form 1099), but that he failed to report receipts where there was no reason to believe that the government had been notified of the payments.

Petitioner's returns were prepared by a certified public accountant (James C. Muskrat) in Joplin, Missouri, where petitioner maintained space in the office of his attorney (Ralph Baird). Petitioner participated in conferences with Muskrat and Baird (Tr. 987, 999, 1001, 1017, 1045, 1046, 1047, 1052, 1060, 1105, 1204, 1319, 1323) concerning the preparation of the returns. None of the 1956 omitted income was mentioned to Muskrat (Tr. 1014), and for 1957 and 1958 income Muskrat relied on Forms W–2 and 1099 (Tr. 1030, 1052–1053, 1097, 1133).

Petitioner, in statements to investigating agents and in testifying, stated he did not know why the omitted receipts were not reported (Tr. 1867–1868, 2377, 2390, 2395–2396), and that he relied on Muskrat and Baird to accumulate income information and prepare returns properly (Tr. 2308).

ARGUMENT

1. There is no merit to the contentions (Pet. 14–23) that petitioner was prejudiced by publicity, both before and during the trial.

There was no discussion of petitioner's tax affairs in the pre-trial press accounts beyond factual references to the pending indictment (R. 49, 57, 61, 70, 76). The examination of the panel of prospective jurors by defense counsel showed that none of them had ever heard of petitioner (Tr. 3, 14). Defense counsel exercised no challenge for cause. Substantial discretion is entrusted to the trial judge in assessing and averting the danger of prejudice from publicity and in ruling on mistrial or continuance motions. *Marshall* v. *United States*, 360 U.S. 310, 312. Three district court judges independently assessed pretrial publicity as lacking inherently prejudicial involvement of petitioner in the "Bobby Baker" investigation (Transcripts of motion hearings on February 6, 1964 (p. 8), April 1, 1964 (p. 33), April 10, 1964 (p. 25)).

It is undeniable that the news media carried reports on the trial while it was in progress. The trial judge repeatedly admonished the jury to avoid all discussion of the case in the news (Tr. 30, 33, 160, 313–314, 458, 646–647, 856, 1072, 1239), and petitioner agreed that it would be imprudent to overdo the warnings (Tr. 77). Petitioner failed to show that any of the stories came to the attention of the jury. Petitioner never requested the sequestration of the jury; and when the trial judge, in response to petitioner's complaints about publicity, decided *sua sponte* to sequester the jury, petitioner objected (Tr. 1242–1250).

Petitioner makes no showing of jury exposure, a usual requirement to support contentions of prejudicial publicity. *Estes* v. *United States,* 335 F. 2d 609, 613 (C.A. 5), certiorari denied, 379 U.S. 964; *United States v. Griffin,* 176 F. 2d 727, 731 (C.A. 3), certiorari denied, 338 U.S. 952; *Smith* v. *United States,* 236 F. 2d 260, 269–270 (C.A. 8), certiorari denied, 352 U.S. 909. Unlike *Marshall* v. *United States,* 360 U.S. 310, there is here no background of press articles flaunting inadmissible evidence before a jury. See also *Janko* v. *United States,* 281 F. 2d 156 (C.A. 8), affirmed, 366 U.S. 716. Nor is there any failure of adequate admonitory instructions, as in *United States* v. *Accardo,* 298 F. 2d 133, 136 (C.A. 7); *Coppedge* v. *United States,* 272 F. 2d 504, 507–508 (C.A. D.C.), certiorari denied, 368 U.S. 855. This is not the case where "a procedure employed by the state involves such a probability that prejudice will result that it is deemed inherently lacking in due process", as in *Estes* v. *Texas,* 381 U.S. 532, 542–543. Refusal to poll a jury, thereby generating new tendencies of a prejudicial nature, and reliance on the jury's integrity in observing admonitory instructions, are not error even in the face of more clearly prejudicial publicity than was present in this case. *Estes* v. *United States,* 335 F. 2d 609, 614–615 (C.A. 5), certiorari denied, 379 U.S. 964; *Ford* v. *United States,* 233 F. 2d 56, 61 (C.A. 5), certiorari denied, 352 U.S. 833.

The court of appeals pointed out that petitioner had been charged with tax fraud in Missouri "long before his activities in Washington began to be revealed there" (Pet. App. 11a), and that the case had been

transferred from the Western District of Missouri to the District of Columbia on petitioner's own motion (Pet. App. 8a). The court nevertheless carefully considered each of petitioner's various claims that he was denied a fair trial and rejected them. The denial of petitioner's motion to transfer the case back to Missouri as well as the denial of a nine-month continuance the court found to be "well within the range of discretion committed to the trial court in the dispatch of its business"; it could find "no indication that this discretion was abused in any way" (Pet. App. 9a). The court likewise found no error in the denial of petitioner's several motions for a mistrial nor in any of the trial judge's evidentiary rulings (Pet. App. 9a–11a). None of these matters which are pressed in the petition warrant further review by this Court.

2. Petitioner urges that the government failed to prove the requisite specific intent to evade tax liability and that such intent was negatived by evidence of his reliance on his attorney and accountant to prepare his tax returns.[4] These were matters for the jury to determine and the jury was carefully and properly instructed on the necessary elements of the government's case. The trial judge charged the jury that

[4] Receipt of the unreported payments was admitted in a memorandum brief (Govt. Ex. 13; R. 260) filed with the Internal Revenue Service by petitioner's attorney, who acted under formal power of attorney (Tr. 370–371). Petitioner's contention (Pet. 34, 36) that the brief was improperly admitted in evidence is without merit. *Banks* v. *United States*, 204 F. 2d 666, 670 (C.A. 8), certiorari denied, 346 U.S. 857; *Himmelfarb* v. *United States*, 175 F. 2d 924 (C.A. 9), certiorari denied, 338 U.S. 860.

there were three ultimate questions to be determined (R. 329):

> First, was there a greater tax due from the defendant for the tax year in question than was shown on the defendant's tax return for that year?
>
> Second, did the defendant know that there was a greater tax due than was shown on the income tax return in question?
>
> And, third, did the defendant wilfully attempt to evade the tax known by him to be due by filing or causing to be filed a false income tax return which understated the tax due for the year covered by the return?
>
> These are the three ultimate questions to be considered by you as to each of the three years in issue. All three elements must exist, that is, you must be able to answer each of these questions in the affirmative before you may return a verdict of guilty as to any one or all of the counts. Each of these elements is indispensable to the existence of the charge in each count of the indictments, and each must be proved by the Government beyond a reasonable doubt, and the absence of any one of these elements would require you to return a verdict of not guilty on that specific charge.

The trial judge also stressed (R. 330) that "[s]pecific intent to evade income tax liability is not to be presumed or inferred merely from the filing of an incorrect or understated tax return" and that (R. 331):

> If the Government has proved to you by the evidence, beyond a reasonable doubt, that the defendant's tax returns for either of the years 1956, 1957 and 1958 did not fully and correctly

> report defendant's income and the tax due thereon in such year or years, this fact standing alone will not warrant a conviction. Conviction of the defendant on the counts charged will only be warranted if you further find that the Government has proved beyond a reasonable doubt that the returns were filed in a wilful and an intentional attempt to evade and defeat the income tax. The wilful attempt to evade and defeat the payment of income tax is an essential element as to each year in question which must be proved by the Government beyond a reasonable doubt, just as any other fact in the case.

And, finally, the jury was instructed that the petitioner could not be found guilty unless he "had actual knowledge of the existence of an obligation to pay a greater tax and * * * wilfully attempted to evade or defeat such tax" (R. 333).

In light of these instructions, the jury's verdict is dispositive of petitioner's contentions unless there was no evidence to support the verdict. But the verdict was amply supported. It was proved that petitioner's receipts considerably exceeded those he reported.[5] The jury was entitled to believe that the

[5] Petitioner contends (Pet. 35-36) that Baird and Muskrat were coerced into testifying for the government by threats of prosecution. Contrary to the petitioner's assertion (Pet. 35), the court of appeals did not find as a fact that their cooperation was coerced, although the dissenting opinion (to which the petition refers) does say that cooperation was "possibly coerced" (Pet. App. 25a). Muskrat was never examined on this question and there is simply nothing in the record to suggest that he was threatened in any way.

The suggestion that Baird was coerced is based on the following admittedly ambiguous question put to Baird by an in-

deductions and exclusions which petitioner claimed on his returns were all that he properly could claim. See *United States* v. *Bender,* 218 F. 2d 869 (C.A. 7), certiorari denied, 349 U.S. 920; see also *Clark* v. *United States,* 211 F. 2d 100 (C.A. 8); *United States* v. *Link,* 202 F. 2d 592 (C.A. 3); *United States* v. *Zimmerman,* 108 F. 2d 370 (C.A. 7). There was testimony (Tr. 699, 748, 404, 938–959, 1340) that petitioner sent hotel bills to his accountant for purposes of claiming deductions although he knew that the bills had been paid directly by his clients and that he was, therefore, taking deductions for expenses he had not incurred. This testimony alone not only warrants a finding of intent to evade tax liability, but also disproves petitioner's claimed reliance on his accountant and attorney.

On the basis of its review of the record, the court of appeals concluded (Pet. App. 16a) that there was evidence to support a finding "that appellant wilfully

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vestigating agent in a recorded interview on February 8, 1962 (Tr. 1956): "Q. What defense have you got if this matter goes to tax court or to criminal court?" Although the question would seem to refer to the potential criminal liability of Baird's client rather than of Baird himself, Baird testified (Tr. 1758) that he considered the question to be a threat of criminal prosecution. This was unquestionably a matter for the jury to consider in determining Baird's credibility as a witness for the prosecution. Defense counsel disclaimed any suggestion that the prosecuting attorneys were a party to the alleged coercion of Baird (Tr. 1610), but rested the claim on the language used by the investigating agent more than 2 years before the trial (Tr. 2127). The trial judge found Baird to be a "reluctant" government witness (Tr. 1609) but denied the government's request to examine him as a hostile witness (Tr. 1364–1366).

followed a course of evading his income tax liabilities by arranging to receive large sums of money for which he did not account in any way." Further, the court found (Pet. App. 21a–24a) sufficient evidence to warrant rejection of petitioner's claim of reliance upon his accountant and attorney. While the dissenting judge thought that the record supported petitioner's claim of reliance (Pet. App. 25a–26a), the narrow evidentiary issue tendered by the petition does not call for resolution by this Court.

CONCLUSION

For the reasons stated, the writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.
MITCHELL ROGOVIN,
Assistant Attorney General.
JOSEPH M. HOWARD,
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Attorneys.

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In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., PETITIONER

v.

UNITED STATES OF AMERICA

MEMORANDUM FOR THE UNITED STATES

On May 5, 1964, petitioner was convicted after a trial by jury in the United States District Court for the District of Columbia on three counts charging him with evasion of personal income taxes in 1956, 1957 and 1958, and the conviction was affirmed by the court of appeals. 353 F. 2d 885. This Court denied a petition for a writ of certiorari on May 2, 1966 (No. 1029, this Term). On petitioner's application, the Chief Justice, on May 6, 1966, stayed the order denying certiorari pending the filing and disposition of a petition for rehearing. In light of this Court's continuing jurisdiction over the cause, the Solicitor General submits this memorandum to advise the Court of information, recently come to his attention, which appears to warrant further proceedings in the district court.

218-914—66

1. On April 21, 1966, attorneys of the Tax Division of the Department of Justice—which was responsible for the prosecution of the tax evasion charges against petitioner—were advised by attorneys of the Criminal Division that, in the preparation of an unrelated criminal matter, the latter had learned that conversations between petitioner and other persons at about the time of petitioner's indictment had been overheard by government agents using a listening device installed in petitioner's hotel suite.

2. The following facts were developed in the course of a further inquiry.

(a) During the winter of 1962–1963, the Federal Bureau of Investigation was engaged in a criminal investigation of various individuals. In furtherance of this investigation, agents of the Bureau installed a listening device in petitioner's hotel suite in Washington, D.C. The device (not a telephone wiretap) was in operation between February and April, 1963.

(b) The investigation by the Bureau's agents was unrelated to the tax-evasion case, in which the grand jury for the Western District of Missouri [1] returned an indictment against petitioner on March 29, 1963. However, the listening device was in operation from approximately two months before until approximately one month after the evidence was presented to the grand jury and the indictment was returned. During that time the monitoring agents overheard, among other conversations, exchanges between

[1] The case was transferred for trial to the District of Columbia on petitioner's motion.

petitioner and the attorney who was then representing him in connection with the tax-evasion charges on which he has been convicted.

(c) Prior to trial, government counsel prosecuting the case against petitioner had access to reports of the Federal Bureau of Investigation summarizing certain of the information obtained by means of the listening device. These reports did not disclose the manner in which the information had been obtained or that such information reflected discussions between petitioner and counsel.

(d) The prosecution's evidence at petitioner's trial was founded solely upon material contained in reports of investigating agents of the Internal Revenue Service. Their investigation of petitioner began in the spring of 1960 as a routine audit examination. It was classified by the Internal Revenue Service as a tax fraud investigation in October, 1960, and was completed in October, 1962. The results of the Internal Revenue Service's investigation were referred to the Tax Division of the Department of Justice on December 12, 1962, and forwarded on January 25, 1963, to the United States Attorney for the Western District of Missouri, with instructions to prosecute.

(e) During the preparation and trial of petitioner's case, no attorney involved in its presentation (or, so far as appears, any other attorney of the Department of Justice) knew that a listening device had been installed in petitioner's suite.[2]

---

[2] Long after the trial, in the fall of 1965, attorneys in the Criminal Division of the Department of Justice learned that a listening device had been installed in the petitioner's suite.

3. The Department of Justice's investigation of this incident indicates that none of the evidence presented to the grand jury or used at petitioner's trial was obtained, either directly or indirectly, from any improper source. Nor was anything learned by the government's trial counsel from the monitoring of petitioner's discussions with his attorney which had any effect upon the presentation of the government's case or the fairness of petitioner's trial.

4. A report of the above events was brought to the attention of the Solicitor General subsequent to this Court's denial of certiorari herein.[3] Notwithstanding the Department of Justice's conclusion that the monitoring of conversations between petitioner and his attorney had no effect upon his conviction or the fairness of his trial, we have no doubt that in the circumstances outlined above petitioner is entitled to a judicial determination. We also recognize that petitioner has standing to raise, in a district court, the question whether other conversations (*i.e.*, conversa-

---

They then reviewed materials derived from that installation for the purpose of determining whether information obtained therefrom would prejudice a pending criminal investigation unrelated to petitioner. During this review, it was not apparent to them that certain of the conversations involved interchanges between the petitioner and his lawyer. This was learned after April 21, 1966, when these materials were reviewed by attorneys in the Tax Division familiar with the criminal tax case.

[3] During the period between April 21, 1966, and the submission of a report to the Solicitor General, the Tax Division conducted an intensive study of the trial transcript and all of the materials relevant to the investigatory activities which had taken place over the preceding years.

tions not involving an attorney-client relationship) which were overheard as a result of the listening device installed in his suite furnished any leads or evidence in his case. At an appropriate hearing, the government proposes to submit all of the facts upon which a full judicial determination can be made.

5. In light of the above, we suggest that either of the following procedures might be appropriate:

This Court might consider the petition for rehearing on the grounds asserted therein and, if those grounds are found insufficient to warrant further review, deny the petition and issue its mandate without prejudice to a further hearing on appropriate motion in the district court.

Alternatively, this Court could issue a writ of certiorari, vacate the judgment of the court of appeals, and remand the case to the district court for further proceedings in which the relevant materials would be produced and the court would determine, upon an adversary hearing, whether petitioner's conviction should stand. The record made in the course of such a hearing would, of course, be subject to review in the court of appeals and ultimately in this Court.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

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OCTOBER TERM, 1965

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FRED B. BLACK, JR., *Petitioner,*

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UNITED STATES OF AMERICA, *Respondent*

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner prays that this Court grant a rehearing of its Order of May 2, 1966 (stayed upon Petitioner's application by Order of the Honorable the Chief Justice, dated May 6, 1966), denying the petition for Writ of Certiorari, and that a Writ of Certiorari issue reversing the divided decision and judgment below of the United States Court of Appeals for the District of Columbia Circuit, with instructions that the Judgment and Sentence of the United States District Court for the District of Columbia be set aside and the indictments be dismissed.

REASONS FOR GRANTING THE REHEARING AND ISSUING THE WRIT

Intervening circumstances of substantial and controlling effect have occurred since the petition was filed:

1. Petitioner's Trial Tainted by F.B.I. Wire Tapping and the Placing of an "Eavesdropping Device" in his Hotel Suite.

A few days prior to this Honorable Court's Order denying the Petition for Certiorari herein, there was filed in the United States District Court for the District of Columbia, in a recently brought criminal case, *U.S.A.* v. *Robert G. Baker,* Criminal No. 39-66, an affidavit of Peter R. Taft, Esq., an attorney at law associated with Edward Bennett Williams, Esq., both counsel for Mr. Baker. It shows that the law offices of Mr. Clifford Jones in Las Vegas, Nevada, the office of Mr. Edward Levinson, and other locations in the Fremont Hotel in Las Vegas, as well as the Sands Hotel in Las Vegas and the apartment of its owner, Mr. Carl Cohen, have been the subject of extensive surreptitious electronic eavesdropping and illegal "bugging" by the Federal Bureau of Investigation.* The filing of this affidavit by Mr. Williams, a respected member of the bar of this Court, gives great credence to its factual statements. As of the time that this Petition leaves for the printer, no denial or controverting affidavit by the government appears of record.

Petitioner Fred B. Black, Jr., shows by his own affidavit (App. p. 17a *infra*) and the affidavit of Clifford Jones, Esq. (App. pp. 19a-20a, *infra*) that during the taxable years involved in his conviction and during the time that he has been under indictment, and

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* A copy of this affidavit is reproduced for the Court's convenience in the Appendix, pp. 1a-16a, *infra.*

until the present time, he was a friend and business associate of Messrs. Jones and Levinson. Frequently during the taxable years involved, and while preparing his defense against the income tax evasion charges here in issue, Petitioner was present at all the locations subject to the surreptitious eavesdropping and illegal wire tapping by Respondent's agents. (Black affidavit, App. p. 18a; Affidavit of Clifford Jones, Esq., App. p. 20a). He telephoned his then attorney (subsequently coerced into being the Government's main witness) Ralph Baird, from these locations and also freely conferred from these illegally "bugged" locations with the attorneys later employed in preparing his defense to the charges involved.

2. Respondent Admits Placing of Listening Device and "Eavesdropping" on Conversations With Petitioner's Attorneys.

While the Appendix to this Petition for Rehearing was being printed and the Petition itself was being readied for the printer, counsel for Petitioner was served with a "Memorandum for the United States," submitted and filed by the Solicitor General, admitting the installation of a listening device in Petitioner's hotel suite in Washington, D. C., thus corroborating the affidavit of Petitioner to the effect that he had reason to believe that such a listening device had also been installed in the suite. The Black affidavit had been signed one hour prior to the service of the Solicitor General's Memorandum.

In the light of the last minute confirmation by Respondent that a listening device had indeed been installed and operated in Petitioner's hotel suite, which suite had served both as his residence and his office. and where he had often conferred with his attorneys,

counsel immediately revised this petition to the extent possible in the few hours remaining before the printer's deadline. It is pointed out that the officially admitted illegal "eavesdropping," taken together with Respondent's insistence on bringing the case to trial at the zenith of adverse publicity, irrefutably confirms the finding of the dissenting Judge below, that Petitioner was deprived of due process of law and the right to a fair trial, guaranteed him by the Constitution.

Equally important, however, the eavesdropping evidence, confirmed by the Memorandum filed herein by the Solicitor General on the very day that this petition was about to be printed, shows that Petitioner was deprived of the effective assistance of counsel in contravention of the Sixth Amendment. *Coplon* v. *U.S.*, 191 F. 2d 749 (CA DC, 1951), *cert. den.* 342 U.S. 926; *Massiah* v. *U.S.*, 377 U.S. 201, 84 S. Ct. 1199 (1964), and *Caldwell* v. *U.S.*, 205 F. 2d 879 (CA DC 1953).

The Solicitor General suggests that this Court either deny the petition without prejudice to a further hearing in the District Court, or that this Court issue a Writ vacating the judgment of the Court of Appeals and remanding the case to the District Court for further proceedings, including an "adversary hearing, whether Petitioner's conviction should stand."

We agree that this Court should issue the Writ, but we respectfully submit that the Court in granting the Writ, should unequivocally direct that the judgment and sentence be set aside and the charges be dismissed.

In urging this action, Counsel can think of no better language than that of the Supreme Court of Washington, which Court (sitting *En Banc* in June of 1963), unanimously held in *State* v. *Cory*, 382 P. 2d 1019:

"We recognize the undoubted validity of the constitutional principles expressed in this opinion, and the others cited, and the conclusion expressed, that no conviction can stand, no matter how overwhelming the evidence of guilt, if the accused is denied the effective assistance of counsel. We do not think, however, that the granting of a new trial is an adequate remedy for the deprivation of the right to counsel where eavesdropping has occurred. So far as the opinion in the Coplon case reveals, the defendant did not ask that the case be dismissed, but merely urged that she be granted a new trial. In the Caldwell case, a footnote indicates that the opinion of the court was that a dismissal would not be proper unless the defendant could show that the invasion of his right to private consultation was so prejudicial that a subsequent trial necessarily would be unfair. In effect, the court in that case said that it was not necessary for the defendant to show that he had been prejudiced in the first trial, in order to secure a second trial, but that it would be necessary to show that he would also be prejudiced in a second trial, in order to secure a dismissal.

We do not appreciate the logic of this conclusion. There is no way to isolate the prejudice resulting from an eavesdropping activity, such as this. If the prosecution gained information which aided it in the preparation of its case, that information would be as available in the second trial as in the first. If the defendant's right to private consultation has been interfered with once, that interference is as applicable to a second trial as to the first. *And if the investigating officers and the prosecution know that the most severe consequence which can follow from their violation of one of the most valuable rights of a defendant, is that they will have to try the case twice, it can hardly be supposed that they will be seriously deterred from indulging in this very simple and convenient method of ob-*

taining evidence and knowledge of the defendant's trial strategy.

Not only was the conduct of the sheriff's office in violation of the constitutional provision assuring the right to counsel, but also of the statutory law, RCW 5.60.060(2), which establishes that communication between an attorney and his client shall be privileged and confidential.

In People v. Cahan, 44 Cal.2d 434, 445, 282 P.2d 905, 911, 50 A.L.R.2d 513 (1955), Judge Roger J. Traynor in explaining the reason that the court abandoned the rule that evidence illegally obtained was admissible and adopted the exclusionary rule, said:

> "* * * We have been compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers with the attendant result that the courts under the old rule have been constantly required to participate in, and in effect condone, the lawless activities of law enforcement officers.
>
> "* * * Out of regard for its own dignity as an agency of justice and custodian of liberty the court should not have a hand in such 'dirty business.' See McNabb v. United States, 318 U.S. 332, 345, 63 S.Ct. 608, 87 L.Ed. 819. Courts refuse their aid in civil cases to prevent the consummation of illegal schemes of private litigants. Lee On v. Long, 37 Cal.2d 499, 502-503, 234 P.2d 9, and cases cited; *a fortiori,* they should not extend that aid and thereby permit the consummation of illegal schemes of the state itself. See Roberts, J., concurring in Sorells v. United States, 287 U.S. 435, 453, 53 S.Ct. 210, 77 L.Ed 413 [86 A.L.R. 249]. It is morally incongruous for the state to flout constitutional rights and at the same time demand that its citizens observe the law."

This concept of how the judiciary should react to violation of constitutional rights, appeals to us.

We think that the court in Fusco v. Moses, supra, made the only disposition of the case which would afford an adequate remedy to the defendants and effectively discourage the odious practice of eavesdropping on privileged communication between attorney and client. There, the court ordered that the charges against the defendants should be dismissed and that they should be reinstated in their jobs.

It is our conclusion that the defendant is correct when he says that the shocking and unpardonable conduct of the sheriff's officers, in eavesdropping upon the private consultations between the defendant and his attorney, and thus depriving him of his right to effective counsel, vitiates the whole proceeding. The judgment and sentence must be set aside and the charges dismissed."

It is so ordered. (Emphasis supplied)

This case has assumed significance beyond the question of protecting the Constitutional rights of this Petitioner. We respectfully submit that at this time the Nation looks to this Court to do for the Republic what the Supreme Court of Washington did for the State of Washington: a decision unequivocally condemning such "eavesdropping activities" by the Department of Justice and its Federal Bureau of Investigation and unequivocally deterring all police officers from "indulging in this very simple and convenient method of obtaining evidence and knowledge of the defendant's trial strategy."

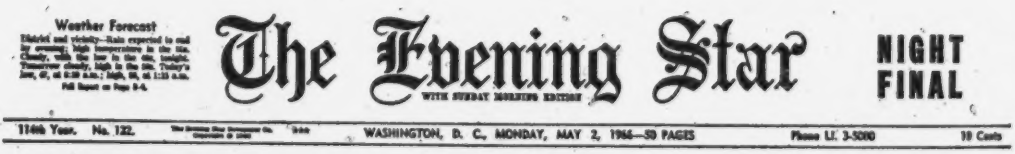
More than a new trial or "an adversary hearing" is needed: The shocking facts in this case call for a pronouncement by this Court that "the odious practice of eavesdropping on privileged communication between attorney and client results in vitiating the whole proceeding * * *", and requires, in the proper administration of justice, a final dismissal of the case.

While the "eavesdropping" developments overshadow the remainder of the grounds urged in this petition for rehearing, Counsel urge issuance of the Writ for the following reasons:

3. Publicity Still Links Petitioner and Baker

This Court is earnestly requested to consider as a whole the cumulative impact of the Justice Department's singling out of Petitioner for trial in Washington as a "Baker" associate at the height of the "Baker" publicity.*

This Court's Order denying certiorari on May 2, despite the great public interest in the denial on the same day of certiorari in the *Ginzburg* case,** produced banner headlines on the front pages of the Washington newspapers, a typical example reading:



Weather Forecast

The Evening Star

NIGHT FINAL

114th Year. No. 122. WASHINGTON, D. C., MONDAY, MAY 2, 1966—50 PAGES 10 Cents

Baker Associate Loses Tax Plea

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* The Harris Survey showed that the Baker publicity was the greatest single factor adversely affecting the President in his campaign for reelection (J.A. 145-6).

** *Ginzburg et al.* v. *United States*, 86 S. Ct. 942.

The Memorandum filed by the United States produced the following headline.

2—THE WASHINGTON DAILY NEWS, WEDNESDAY, MAY 25, 1966

Justice Makes Extraordinary Admission

Baker Case Figure's Hotel Room Bugged

Thus an allegedly simple tax case, when relentlessly pressed for trial at the height of the "Baker" publicity by a coordinated effort apparently directed against all persons who had business or personal connections with Messrs. Baker, Jones, Levinson and Cohen, *et al.*, coupled with illegal "bugging" and recording by Respondent, made a fair trial by an impartial jury impossible at that time. When the President of the United States made a public statement during the course of the trial* the Court should have immediately declared a mistrial.

4. Conflict of Decision Below With Intervening Decisions of This Court.

Since the filing of the Petition for Certiorari, this Court decided the tax case of *C.I.R.* v. *Tellier,* 383 U.S. 687, 86 S. Ct. 1118. In *Tellier* this Court said (p. 1120):

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* Which the jurors obviously read or learned about before they were "locked up" sua sponte by the Trial Judge, in accordance with his announced intention to "lock up" the jury if the jurors violated his instructions and read inflammatory articles in the press.

> We start with the proposition that the Federal income tax is a tax on net income, not a sanction against wrong-doing.

and quoted from the speech of Senator Williams on the floor of the Senate, (p. 1121):

> The object of this bill is to tax a man's net income; that is to say, what he has at the end of the year after deducting from his receipts his expenditures or losses.

The majority of the court below observed that Petitioner had to face "delicate problems of identification and characterization of the itemization of expenses" and evidence of petitioner's serving his clients in failing to itemize their expenses supplied the willful intent to defraud and evade income taxes for the years 1956, 1957 and 1958. The trial court, in not declaring a mistrial when Petitioner was characterized as an influence peddler by the prosecutor, violated the holding of this Court in *Tellier, supra.* The vigorous dissent of Senior Circuit Judge Miller actually is in harmony with *Tellier,* and states a verdict of innocence should have been directed at the conclusion of the prosecution's case for the very reasons enunciated in *Tellier* (Appendix to Petition, pp. 24a-27a).

In *U.S.* v. *Romano* (Nov. 22, 1965), 382 U.S. 136, 86 S. Ct. 279, defendants were convicted under 26 U.S.C. 5601 (b)(4), which provided that if, in a trial, defendant is shown to have been at the site or place where distilled spirits were produced, the presence of the defendant shall be deemed sufficient evidence to authorize conviction "unless the defendant explains such presence to the satisfaction of the jury." On appeal, the Court of Appeals reversed the convictions

because instructions based upon these statutory provisions violated the "Due Process Clause". This Court affirmed the Court of Appeals.

As in *Romano,* Respondent urged, and the trial court erroneously charged, notwithstanding the undisputed evidence from Petitioner's employers to the effect that the expenses were "expenses" of his employers, that absent proof as to their ultimate recipients, Petitioner was guilty of willful evasion of income taxes.

We submit that *Tellier* and *Romano* require, for the proper administration of justice in the Federal courts in income tax evasion cases, that this Court reverse the courts below and hold that a mere showing that Petitioner received monies to be disbursed by him for expenses of his *employers'* business (not expenses of Petitioner's business), did not shift the burden of proof to Petitioner to explain to whom his employers' money was disbursed on their behalf. Such shifting of the burden of proof in a criminal tax evasion case violates the due process clause of the Fifth Amendment.

Respondent's own instructions, captioned "How to Prepare Your Income Tax Returns" covering the years 1956, 1957 and 1958, were used by Petitioner's certified public accountant and by his tax attorney in the preparation of Petitioner's income tax returns. Petitioner's tax attorney Baird testified on these instructions. Based upon his professional knowledge of the preparation of income tax returns, he stated that in his opinion these sums (which Respondent claims should have been included in the income tax returns) should not have been included in such returns. This testimony was stricken and the trial

court withheld from the jury Respondent's instructions captioned, "How to Prepare Your Income Tax Return"* for the years in question. Instead of permitting Respondent's published instruction to be read by the jury, the trial court charged that all expenses paid or reimbursed must be included "in income" of the taxpayer and that the taxpayer would be allowed only deductions for "necessary expenses paid". The trial court further charged the jury: "The question for you to decide, therefore, is not whether they were called expenses, but whether they were actually spent for expenses". These instructions were erroneous, and shifted to Petitioner the burden of proving to whom his employers' expenses were disbursed.

5. Respondent's Brief in Opposition Is Misleading.

Respondent's Brief states (p. 5):

> "Petitioner participated in conferences with Muskrat and Baird * * * concerning the preparation of the returns. None of the 1956 omitted income was mentioned to Muskrat * * * and for 1957 and 1958 income, Muskrat relied on forms W-2 and 1099 * * *".

From this statement it would appear that Petitioner participated in the actual preparation of the returns for the years 1956, 1957 and 1958, with Muskrat having no information on the "1956 omitted

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* These instructions for 1958 (p. 6). state *in haec verba* that trade and business deductions and reimbursed expenses, "need not be shown on the return" of the taxpayer. The instructions further state in regard to "reporting" expenses, "You need not report these items on your return, either itemized or in total amount".

income". Muskrat admitted he only saw Petitioner on two occasions in 1956 (Tr. 1204); in 1957 he might have seen Petitioner on "two" occasions (Tr. 1204); and "possibly one or two times" in 1958 (Tr. 1205). Respondent's transcript references do not support the statements, and both Opinions below demonstrate their inaccuracy. The majority found (353 F. 2d 885, pp. 892 et sequ.):

> "The relationship between appellant and his associates, Ralph Baird and James Muskrat, is central to this issue. Baird, as has been said, was an old friend. He had served as appellant's attorney on various occasions since the beginning of his practice in 1938. When the appellant desired to establish his own public relations business in 1955, he used a room in Baird's Joplin, Missouri, law office as headquarters, most of appellant's time being spent travelling or in Washington. And, from this date, Baird played a prominent part in appellant's business, including the role already described in respect of Blyco Corp. He drafted contracts for appellant, as well as engaging in some travel and consultation work on his behalf.
>
> At the direction of appellant, Baird obtained the services of an accountant, James Muskrat, to prepare appellant's personal tax returns. Muskrat prepared appellant's returns for the years in question and also prepared the Blyco Corp. returns for 1957 and 1958. Appellant's files, records, and bank statements were available to him. But Muskrat's instructions were indefinite, and the supervision exercised by appellant was sporadic. When Muskrat did not know how to handle a particular item, he would consult with Baird.
>
> Appellant maintains that Baird and Muskrat possessed all the information necessary for pre-

> paring an accurate return and that he relied upon them to do so. He testified that Baird was responsible for maintaining, assembling and keeping the records of his activities; that all records accumulated during his travels were sent to Baird; and that the entire accounting operation for both his own activities and those of Blyco Corp. were entrusted to Baird and Muskrat. He further testified that he kept Baird informed of all his receipts."

An investigator, retained by Petitioner's former attorney, Bernard, testified that his examination in 1961 of the files maintained by Baird in Joplin revealed evidence of all the unreported items; and Senior Circuit Judge Miller, holding in his dissent that: "The jury should have been instructed to find him not guilty", (353 F. 2d, at pp. 896, 897) found:

> Baird, who had long been Black's attorney, and Muskrat, his young and inexperienced accountant, prepared the returns, with very little, if any participation by Black.
>
> * * * * *
>
> "It is significant that Muskrat said Black never told him to omit any item of income from his tax return. He testified that he depended on Baird for information and that he saw Black only a few times. And Baird admitted he told Black the amount of his income and his estimated tax, thus showing the latter had no part in the preparation of the return."

CONCLUSION AND PRAYER

Petitioner prays that this Honorable Court grant this Petition for Rehearing, and on rehearing, issue a Writ of Certiorari reversing the judgments below;

with instructions that the Judgment and Sentence be set aside and the charges be dismissed.

The affidavits reproduced in the Appendix to this Petition and the startling "Memorandum for the United States" filed by the Solicitor General on May 24, require no less to insure preservation of the Constitutional rights, not only of this Petitioner, but of every citizen of these United States.

Respectfully submitted,

HANS A. NATHAN
WARREN E. MAGEE
BERT B. RAND

By HANS A. NATHAN

Attorneys for Petitioner

Certificate of Counsel

I hereby certify that this Petition for Rehearing is presented in good faith and not for delay and that the Petition is restricted to those grounds described in Rule 58 of this Honorable Court.

HANS A. NATHAN
Counsel for Petitioner

Dated May 25, 1966.

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APPENDIX

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APPENDIX

I

Affidavit of Peter R. Taft

(Filed April 25, 1966)

Robert M. Stearns, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Cr. 39-66

AFFIDAVIT

UNITED STATES OF AMERICA
v.
ROBERT G. BAKER

PETER R. TAFT, being duly sworn, deposes and says:

1. I am an attorney for the defendant Robert G. Baker in this case. I am filing this affidavit in support of said defendant's Motion for Suppression of Evidence herein. Almost all of the information hereinafter stated concerning electronic eavesdropping and wiretapping in Las Vegas, Nevada, is based either on depositions under oath by officials of the Central Telephone Company in the case of *Edward Levinson, et al.* v. *Central Telephone Company*, Civil Action No. 643, United States District Court for the District of Nevada, or on conversations of attorneys for the defendant herein with attorneys for the Central Telephone Company and attorneys for the Department of Justice, or on official records of the Central Telephone Company. If the Court so requires, the defendant's attorneys will provide the Court with the depositions referred to and with the exact time, place and persons present and substance of said conversations relied upon.

2. On or about May 18, 1961, agents of the Federal Bureau of Investigation leased 25 telephone lines from their office building at 310 - 11th Street, Las Vegas, Nevada,

to the Central Office of the Central Telephone Company, Southern Nevada Division, at 125 Las Vegas Boulevard, Las Vegas, Nevada. The lines were leased in the name of a fictitious company known as Henderson Novelty Company. Bills were sent either to 301 South 11th Street, or to a Post Office Box rented in the name of Henderson Novelty Company: P.O. Box 1423, Las Vegas, Nevada. These 25 lines were known as the LL 24 series of leased lines, going from LL 24-1 to LL 24-25, using cable 12, pair 1476 to pair 1500, of the Central Telephone Company lines.

3. The Federal Bureau of Investigation employed these leased lines in a massive wire-tapping and eavesdropping surveillance of the Las Vegas gambling casinos and persons connected therewith. The Bureau's method was to select a room where conversations it wished to overhear were likely to occur; to place in the room, either by trespass or deception, a bugging device connected to its telephone system and so located as to pick up not only conversations in the room but also both ends of telephone conversations held in the room; and to order the telephone company to connect one of the leased lines to the telephone system of the room.

4. The exact number of such separate installations is unknown to affiant. Affiant has learned, however, from the service order journal of the Central Telephone Company, covering the years 1962 and 1963, that there were at least 24 to 26 separate uses of the LL 24 series of leased lines between January 1, 1962, and August, 1963. The total number of uses and all of the specific places which were bugged are facts which can be obtained only from the Federal Bureau of Investigation and, perhaps, from the Central Telephone Company. Of the eight bug locations known to affiant, all involved eavesdropping on gambling casinos or the homes of casino operators.

5. The bugging operation in the Fremont Hotel is typical of the F.B.I.'s use of the leased lines. On or about October

30, 1962, agents of the F.B.I. asked that LL 24-9 be connected with the mainframe of the Fremont Hotel in Las Vegas, Nevada. A copy of the service order, an official record of the Central Telephone Company, ordering the installation of this line is attached hereto as Exhibit A. Thereafter, said agents, with the aid and complicity of employees of the Central Telephone Company, placed an electronic eavesdropping and wiretapping device in the phone in the office of Edward Levinson and connected said device to LL 24-9. On information and belief, said device would pick up all conversations held in the office of Edward Levinson and both ends of telephone conversations made to or from the phone in said office. Said conversations were monitored and recorded at the FBI building. The device remained in the phone until Saturday, April 27, 1963, when it was discovered. Agents of the F.B.I. contacted the commercial office of the Central Telephone Company on Monday, April 29, 1963, and asked that LL 24-9 be disconnected. A copy of the telephone company record disconnecting said line is attached hereto as Exhibt B. Copies of the billing stubs for the period during which LL 24-9 was connected to the Fremont Hotel are attached hereto as Exhibit C.

6. During the period since 1961, the F.B.I. maintained a second eavesdropping device at the Fremont Hotel. Its specific location, however, is unknown to affiant.

7. On numerous occasions during the period of the Fremont Hotel bugging, defendant had meetings in the office of Edward Levinson and elsewhere at the Fremont Hotel. He also telephoned the aforementioned places on numerous occasions. In many of the aforesaid meetings and telephone conversations he discussed some of the matters referred to in the indictment. Everything said in those meetings and those telephone conversations came within the scope of the F.B.I.'s electronic surveillance and was overheard and recorded.

8. In the winter and spring of 1962 to 1963, defendant frequently stayed at the Sands Hotel in Las Vegas. When not there, he frequently telephoned to the apartment of Carl Cohen, one of the Sands' managing partners, and elsewhere in the Sands. In February, 1963, agents of the F.B.I. asked that LL 24-15 and LL 24-16 be attached to the mainframe of the Sands Hotel. The agents then placed an eavesdropping device to each of the leased lines in the apartment of Carl Cohen in the Sands Hotel. On information and belief, LL 24-5 was also attached to the mainframe of the Sands Hotel for the purpose of eavesdropping and/or wiretapping between 1961 and the present. LL 24-15 and LL 24-16 were billed to the Henderson Novelty Company until May, 1963, after which they were billed to Clark Associates, a successor company to Henderson Novelty Company created by agents of the F.B.I. after the discovery of the Fremont device. The Sands Hotel devices were discovered on July 2, 1963, and the agents ordered the lines disconnected on July 12, 1963. The installation and disconnect orders on LL 24-15 and LL 24-16 are attached hereto as Exhibits D and E. Consequently, just as in the case of the Fremont, all of defendant's conversations at the Sands and by telephone to the Sands, many relating to the subject matter of the indictment, were overheard and recorded.

9. A device just like those installed in the Sands was found in August, 1963, in the office of Major Riddle, a managing partner of the Dunes Hotel. How long it had been there and to which of the LL 24 lines it was attached are unknown to affiant. However, defendant, in the early part of 1963, was often in that office and often telephoned to that office, discussing some of the matters referred to in the indictment. His said conversations, like those earlier referred to in connection with the Fremont and the Sands, were overheard and recorded.

10. The defendant also had meetings in and spoke by telephone to the executive offices and other locations at the

Thunderbird Hotel and the home and law office of Clifford Jones in Las Vegas. On August 15, 1965, Jones had his law office at 230 Las Vegas Boulevard, Las Vegas, Nevada, checked by an electronics expert for possible eavesdropping or wiretapping devices. The expert found secreted in a telephone well in the wall, a small microphone and radio transmitter powered by current from the telephone lines. On the basis of present knowledge, affiant does not know how long said device was secreted in Clifford Jones' law office or who placed it there. Nor has affiant, up to this point, uncovered the evidence with which to prove that the F.B.I.'s massive electronic surveillance of the Las Vegas gambling casinos encompassed the Thunderbird Hotel. In view of the fact, however, that he can prove that the surveillance covered not only the Fremont, Sands and Dunes, but also the Desert Inn, Stardust and Flamingo, he submits that it is highly probable that inquiry at a hearing ordered by this Court will promptly reveal that the Thunderbird was covered as well. Defendant's conversations with Clifford Jones, named as a co-conspirator in the indictment, apparently loom large in the prosecution's case. Since some of those conversations occurred in Jones' bugged law office and others (see, e.g., Overt Act No. 3 in Count Nine of the indictment) in the undoubtedly bugged Thunderbird executive offices, frequently used by Jones for his meetings, there can hardly be any question that the conversations were overheard and recorded.

11. The F.B.I.'s large-scale electronic surveillance was not confined to Las Vegas. An identical operation, using leased telephone lines, eavesdropping devices built into normal telephone company connecting blocks, fictitious names, and complicity of telephone company employees, was uncovered in Kansas City during hearings held by the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary. The general scheme in Kansas City was described in the testimony of Arthur Brewster, Division Security Supervisor in the

legal department of the Southwestern Bell Telephone Company. See Transcript, volume 3, Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, Surveillance Techniques of the Internal Revenue Service, Wednesday, October 30, 1965, Kansas City, Missouri, pp. 460-88. Mr. Brewster testified that he was the primary contact with the Federal Bureau of Investigation for the installation of leased lines. He stated that the Bureau probably contacted his office rather than the normal business office because the lines were used "for the purpose of listening devices". *Id.* at 462-63. These lines were strung from the FBI office to terminal spots at designated addresses. These terminal spots could be either at a utility pole behind the premises or in the basement. *Id.* at 480. Mr. Brewster testified on the basis of telephone company records that leased lines were installed from the FBI office to the premises of various suspected gambling joints in Kansas City on February 3, 1961 (two lines); on April 24, 1961; January 1, 1962 (two lines); February 19, 1962 (two lines); June 10, 1964; and January 5, 1965. *Id.* at 473-82. Mr. Brewster also stated that leased lines could be used for wiretapping. The testimony continues:

> "Senator Long. It could be true of the hotel, yes, if you wanted to wire into one of the hotels, you could come into the basement and it would be a simple matter to hook it on to any room in the hotel, wouldn't it?
>
> "Mr. Brewster. That's right."

Id. at 481. Mr. Brewster stated that if one were familiar with the terminals in a building terminal box, a wiretap by means of a leased line could be hooked up in 30 seconds. *Ibid.* Other telephone company employees testified to the attempted installation of a listening device into the Original Toy Shop in Kansas City. *Id.* at 439-40, 443-45. These employees were shown the listening devices by the agents of the F.B.I. *Id.* at 440, 445. They were described as being built into a connecting block, a normal piece of telephone

equipment. *Id.* at 439, 447. This is identical to the devices used in Las Vegas.

12. On information and belief, a similar F.B.I. eavesdropping and wiretapping scheme using leased lines has been uncovered in Miami, Florida.

13. On information and belief, the F.B.I. has conducted a similar electronic surveillance, including the use of leased telephone lines, in Washington, D. C. In the light of the F.B.I.'s close surveillance of defendant's conversations in Las Vegas, it is highly likely that they also included him in their Washington operation. Defendant's only assurance that his constitutional and legal rights will be protected can come from being afforded an opportunity at a hearing before this Court to learn the full extent to which his rights have been invoked. Only through such a hearing can defendant ascertain whether the F.B.I.'s Washington bugging operation has included his home, his law office, an apartment rented in his name at 308 N Street, S.W., and the various offices and telephones used by him in the United States Capitol Building.

PETER R. TAFT
Peter R. Taft
Counsel for defendant Baker

Subscribed and sworn to before me
this 23rd day of April, 1966.

MARY JO FRECHIEE
Notary Public, D.C.

My Commission Expires 4-14-70

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CATEGORY 1 TYPE OF ORDER NO ORD. 86914

EFFECTIVE ACCESS 11/2/62
ADT 11/2/62 BJS
LISTING TEL. LL 24-9
STREET Kondorson Novolty Co
TOWN 301 S 11th
CLASSIFIED HEADING LV (HCS 1-11342)
EXTRA LISTING

I N

con 1 loc chan 4/4 almi 5.00

10/30 11/30 L 500
IC 350
50
900

OUT

LAS VEGAS REPORTERS

Deponent
Defendants Exhibit D-1
for Identification
Reporter-Notary Initials

REMARKS Fremont Hotel

T/C

BILL ☐ IC 3.50

BRIDGE WITH		ROTARY WITH		SWITCH-ROOM		ROTARY BOOK	

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	S-BLOCK	STA. NO.
		12	1434					
		10	1000					

RECORD

TYPE OF INSTRUMENT

MDF IDF
INSTALLER
TST. BD.
DATE COMP. 10-30

BLK LOG ASSIGNED 11-2

FORM T-80 REV. 8-60
NOV 6 1962
BILLING
DEC 4 1962

EXHIBIT A

CATEGORY | TYPE OF ORDER | NO | MD 73597

EFFECTIVE 4/29 5/2/63 | PW | TEL.

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LISTING

STREET

TOWN CLASSIFIED HEADING

EXTRA LISTING

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Hondoncon Novelty Co
301 South 11th
LV (city)

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LAS VEGAS REPORTERS
Deponent
Defendants Exhibit for Identification C-1
Reporter-Notary Initials

REMARKS Fremont Hotel

Y/C

BILL ☐ FB- same

BRIDGE WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	T-BLOCK	STA.
		12	1118					
		10	1000					

RECORD

TYPE OF INSTRUMENT | MDF | IDF

INSTALLER Walter

TST. BD. 7

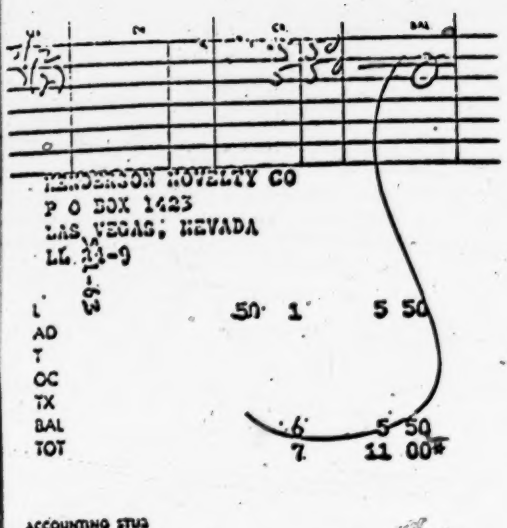
DLK | LOG | ASSIGNED 3-5-63 | DATE COMP. 4-29-63

FORM T-20 REV. 8-60

BILLING

MAY 20 1963

EXHIBIT B



HENDERSON NOVELTY CO
P O BOX 1423
LAS VEGAS, NEVADA
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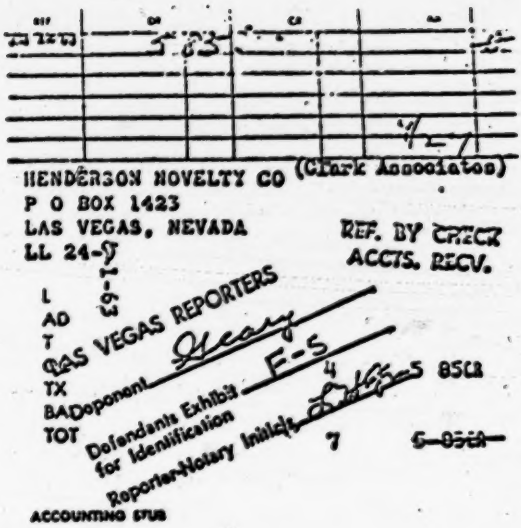

HENDERSON NOVELTY CO (Clark Associates)
P O BOX 1423
LAS VEGAS, NEVADA
LL 24-9

REF. BY CHECK
ACCTS. RECV.

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LAS VEGAS REPORTERS
Deponent Geary
Defendants Exhibit F-5
for Identification
Reporter-Notary Initials
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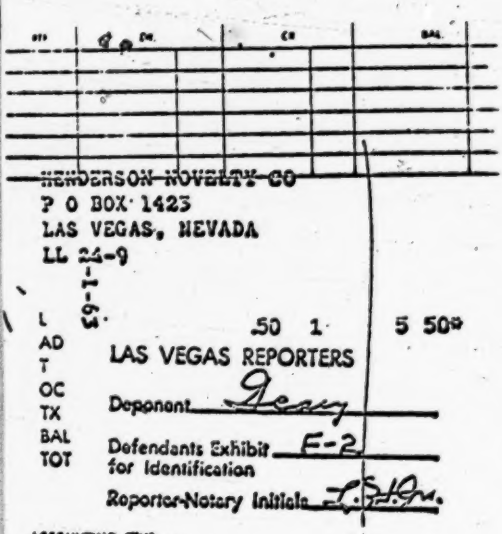
7 5 85

ACCOUNTING STUB



HENDERSON NOVELTY CO
P O BOX 1423
LAS VEGAS, NEVADA
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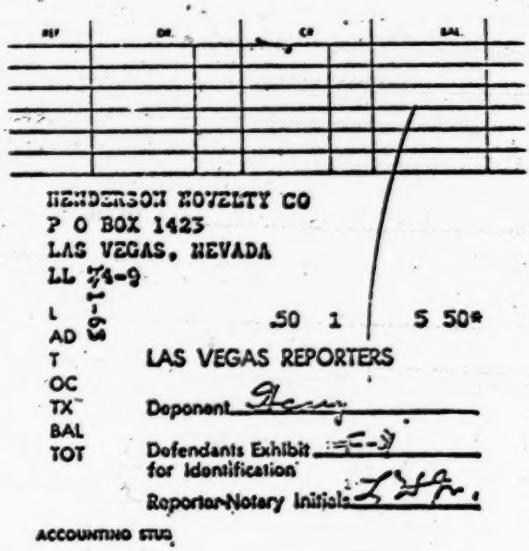
LAS VEGAS REPORTERS
Deponent Geary
Defendants Exhibit F-2
for Identification
Reporter-Notary Initials

ACCOUNTING STUB



HENDERSON NOVELTY CO
P O BOX 1423
LAS VEGAS, NEVADA
LL 24-9

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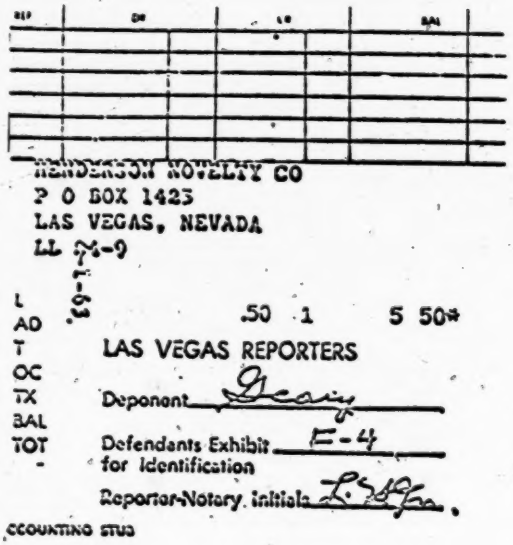
.50 1 5 50

LAS VEGAS REPORTERS
Deponent Geary
Defendants Exhibit F-3
for Identification
Reporter-Notary Initials

ACCOUNTING STUB

EXHIBIT C



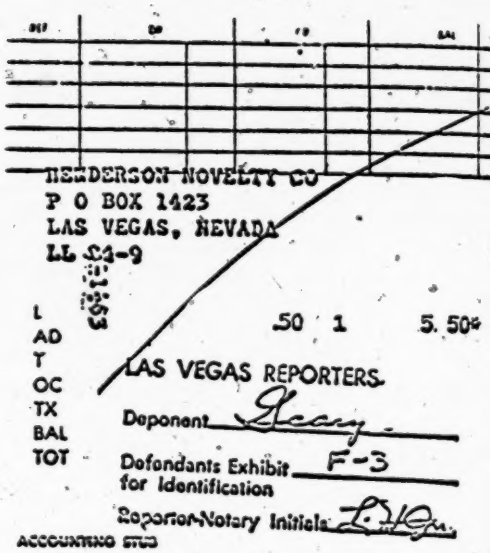


EXHIBIT C (Page 2)

DATE ORDER [illegible] TYPE OF ORDER RO ORD. 710082

EFFECTIVE ACCESS 2/20/63

ADV 2/19/63 BJS

TEL LL 24-15

LISTING Henderson Novelty Co

STREET 301 S 11th

TOWN CLASSIFIED HEADING LV (HC 1-113-A-2)

EXTRA LISTING —

IN

Con 1 Loc chan 15/4 ALM 18.75

2/20 2/24 L 536

ic 350

54

940

OUT

LAS VEGAS REPORTERS

Deponent Kleany

Defendants Exhibit for Identification J-13

Reporter-Notary Initials

REMARKS Sands Hotel

T/C

BILL ☐ I_c 3.50

BRIDGE WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	B. BLOCK	STA. NO.
		12	1110					
		242	721					
		104	317					

RECORD

TYPE OF INSTRUMENT

MDF IDF

INSTALLER [illegible]

TST. BD. 3

DLR LOG ASSIGNED 3-20 DATE COMP 3-20

FORM T-50 REV. 8-60

BILLING

FEB 23 1963

MAR 7 1963

EXHIBIT D

CATEGORY | TYPE OF ORDER | NO. | ORD. MD 19303

EFFECTIVE ACCESS 7/12/63 | 7/5/63 | PW | TEL:

ADT

LISTING

STREET

TOWN CLASSIFIED HEADING

EXTRA LISTING

w 20.63

IN

7/12-7/31 11.47 115. 12.64 7.99

LL 24-15

Clark Associates

Loo Chan 15/4 almi 18.75

OUT

LAS VEGAS REPORTERS

Deponent Gleason

Defendants Exhibit for Identification K-1

Reporter-Notary Initials

REMARKS

Sands

T/C

BILL ☐ FB- P O Box 1423 City

BRIDGE WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	S. BLOCK	STA. NO.
LL24-15		12	1410					
		242	721					
		1014	915					

RECORD

TYPE OF INSTRUMENT

MDF | IDF

INSTALLER Mallory

TOT. BD.

DATE COMP. 7-15

BLK | LOG | ASSIGNED 7-15

FORM T-80 REV. 8-60 BILLING

JUL 19 1963

EXHIBIT D (Page 2)

CATEGORY 1 D Serv LL NO 71803

EFFECTIVE 2/20/63
ACCESS 2/19/63 DJS

ADT

LISTING TEL.: LL 24-16

STREET Henderson Novelty C/O

TOWN 301 S 11th

CLASSIFIED HEADING LV (HC 1-113-A-2) IN

EXTRA LISTING

Con 1 Loc Chan 15/4 ALM 18.75

LAS VEGAS REPORTERS

Deponent Geary

Defendants Exhibit for Identification L-1

Reporter-Notary Initials L. S. Dr.

2/20 2/28 L 536 OUT
Ic 350
W 54
946

XXX Sands Hotel

T/C —

BILL ☐ Ic 3.50

BRIDGE WITH		ROTARY WITH		SWITCH-ROOM		ROTARY BOOK	

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER		I-BLOCK	STA. NO.
		12	1491						
		242	722						
		104	950						

RECORD

TYPE OF INSTRUMENT

MDF IDF

INSTALLER mailman

TST. BD.

ILK	LOG	ASSIGNED 2-20	DATE COMP. 2-20

FORM T-80 REV. 9-60

BILLING

FEB 23 1963 MAR 7 1963

EXHIBIT E

CATEGORY TYPE OF ORDER NO ORD. MD 75384

EFFECTIVE 7/12/63
ACCESS 7/15/63 PW TEL.
ADT
LISTING
STREET
TOWN
CLASSIFIED
HEADING
EXTRA
LISTING

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IN

7/12-7/31 1149 12.64 7.99

LL 24-16

Clark Associates

Loc Chan 15/4 almi 18.75

OUT

LAS VEGAS REPORTERS

Deponent Geary

Defendants Exhibit for Identification M-1

Reporter-Notary Initials L. S. Jr.

REMARKS

Sands

T/C

BILL ☐ FB- P O Box 1423 City

BRIDGED WITH	ROTARY WITH	SWITCH-ROOM	ROTARY BOOK

TELEPHONE NUMBER	INTCEPT	CABLE	PAIR	TERMINAL	PAIR	FINDER	F. BLOCK	STA. NO.
LL24-16		12	1491					
		242	722					
RECORD		104	150					

TYPE OF INSTRUMENT

MDF IDF
INSTALLER Mallory
TOT. BD. 3
DATE COMP. 7-15

BLK LCC ASSIGNED 7-15

FORM T-80 REV. 8-60 (WE) JUL 15 1963

BILLING

EXHIBIT E (Page 2)

II

Petitioner's Affidavit

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. 1029

FRED B. BLACK, JR., *Petitioner,*

v.

UNITED STATES OF AMERICA, *Respondent.*

PETITIONER'S AFFIDAVIT IN SUPPORT OF PETITION FOR REHEARING

DISTRICT OF COLUMBIA, SS:

FRED B. BLACK, JR., being duly sworn, deposes and says:

1. My name is FRED B. BLACK, JR., and I am the Petitioner herein.

2. I have read the affidavit of PETER R. TAFT, Esquire, filed on April 25, 1966, in the case of *United States of America* v. *Robert G. Baker,* Criminal No. 39-66, in the United States District Court for the District of Columbia, shortly after it was brought to my attention through newspaper publicity.

3. Mr. EDWARD LEVINSON, the person mentioned in said affidavit as one of the persons whose premises were the subject of extensive wire-tapping, has been a personal friend of mine since January 1961, when I was introduced to him by Mr. CLIFFORD JONES.

4. CLIFFORD JONES, Esq., Las Vegas attorney and former Lieutenant Governor of that State, a co-defendant of Mr. BAKER in said case (mentioned in paragraph 10, page 5 of the Taft affidavit), whose home and law offices, according to the evidence attached to the affidavit, were also subject to extensive wire-tapping by the Federal Bureau of Investigation, has been a friend of mine since 1933.

5. Because of the friendship aforesaid and because of business dealings with both Mr. JONES and Mr. LEVINSON, I have had frequent occasions during the years from 1960 through 1965 to visit Mr. JONES at his home and at his law office, and Mr. LEVINSON at his office in the Fremont Hotel in Las Vegas, both socially and in connection with various business matters.

6. During the years between 1960 and 1966, I have frequently stayed at the Sands Hotel in Las Vegas, another location shown to have been wire-tapped by the Federal Bureau of Investigation (para. 8, page 4, Taft affidavit). I am acquainted with Mr. CARL COHEN, mentioned in the said affidavit, and have been in his apartment. Both Mr. COHEN's apartment and other locations at the Sands Hotel are shown by the Taft affidavit to have been subjected to the placing of eavesdropping devices connected with wire-tapping lines leased by the Federal Bureau of Investigation.

7. During the years between 1960 and 1966, I have frequently used the telephone in all the locations aforesaid and have conversed numerous times over the long distance telephone from these Las Vegas locations with my various attorneys, to wit: Mr. RALPH BAIRD, Joplin, Missouri; Mr. LAWRENCE BERNARD, Washington, D. C.; Mr. JOHN CYE CHEASTY (then of Washington, D. C.); and Mr. HANS A. NATHAN, Washington, D. C. During the years from 1960 to 1966, I also have had frequent telephone conversations with Mr. ROBERT G. BAKER at and from the places mentioned in the Taft affidavit, and also have had telephone conversations with Mr. BAKER at his offices in Washington.

8. At various times during the past four years, I have had the impression that my offices, located at 1730 K Street, N.W., Washington, D. C. and in the Sheraton-Carlton Hotel, Washington, D. C. (which latter location I also used occasionally as a residence) have been the subject of elec-

tronic surveillance and wire-tapping. Unable to obtain proof thereof, I refused to believe persons who suggested that this was the case. I therefore used the telephone at my office and my residence freely in discussions of my tax matters (and of my defense after I was indicted) with the attorneys aforementioned.

9. On the basis of the Taft affidavit, I now believe that not only the locations mentioned in the Taft affidavit, but also my own home and offices have been the subject of electronic surveillance by the Federal Bureau of Investigation in the manner indicated in the Taft affidavit.

FURTHER AFFIANT SAYETH NOT.

FRED B. BLACK, JR.
Fred B. Black, Jr.

SUBSCRIBED and sworn to before me, this 24th day of May, 1966.

LOUISE G. BURROUGHS
Notary Public

[SEAL]

My commission expires: Sept. 30, 1970

III

Affidavit of Clifford A. Jones, Esquire

STATE OF NEVADA }
COUNTY OF CLARK } ss:

CLIFFORD A. JONES, being first duly sworn on oath, deposes and says:

That I am an attorney at law, practicing at 230 Las Vegas Boulevard South, Las Vegas, Nevada; that I have known Mr. Fred Black for many years; that during the years 1958 to 1965, Mr. Black was in my office in Las Vegas, Nevada on many occasions, not less than 15 times

in number; that on several occasions while he was present in my office he discussed with me his problems connected with his tax matters and tax case; that I am informed and believe that on occasions he made long-distance telephone calls from my office to persons in Washington, D. C. and Joplin, Missouri.

DATED this 11th day of May, 1966.

CLIFFORD A. JONES
Clifford A. Jones

Subscribed and Sworn to before me
this 11th day of May, 1966.

KATHRYN WALDMAN
Notary Public in and for said
County and State

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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1029, October Term, 1965

FRED B. BLACK, JR., PETITIONER

v.

UNITED STATES OF AMERICA

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This supplemental memorandum is submitted in response to this Court's order of June 13, 1966, requesting "a response from the Government in this case, not limited to, but directed in particular toward the kind of apparatus used by the Government; the person or persons who authorized its installation; the statute or Executive Order relied upon; the date or dates of installation; whether there is in existence a recording of conversations heard; when the information concerning petitioner came into the hands of any attorney for the Government and to which ones, as well as what use was made of the information in the case against petitioner."

1. The listening device referred to in our memorandum of May 24, 1966, was a tubular microphone which

225-044—66

was installed through the common wall of a room adjoining the suite occupied by petitioner at the Sheraton-Carlton Hotel in Washington, D.C. The microphone extended through the six-inch common wall and one-fourth of an inch into the one-half inch molding of petitioner's suite. It was installed on the afternoon of February 7, 1963, and agents of the Federal Bureau of Investigation began to monitor conversations in petitioner's suite on the afternoon of the following day. The installation was removed and the monitoring was terminated on April 25, 1963.

No recording of any portion of the monitored conversations exists today. The assignment of the monitoring agents was to keep a contemporaneous log in which were summarized the conversations in petitioner's suite. A tape recorder was available and was used to record particular conversations whenever a monitoring agent felt that such a recording would be helpful in preparing his summaries. After the summaries were prepared, the used tape was erased.

While none of the recordings are, consequently, available today, the handwritten notes of the monitoring agents do exist. These notes summarize the conversations and, in some instances, contain excerpts from conversations.

2. No specific statute or executive order was relied upon in the installation of the listening device in question. Under 5 U.S.C. 300, the Attorney General has the authority to appoint officials for the detection and prosecution of crimes against the United States. In carrying out this responsibility, Attorneys General have delegated to the Director of the Federal Bureau

of Investigation the duty to gather intelligence, to investigate violations of federal laws, and to collect evidence in cases in which the United States is or may be a party. See 28 C.F.R. § 0.85 (1966 rev.).

An exception to the general delegation of authority has been prescribed, since 1940, for the interception of wire communications, which (in addition to being limited to matters involving national security or danger to human life) has required the specific authorization of the Attorney General in each instance. No similar procedure existed until 1965 with respect to the use of devices such as those involved in the instant case, although records of oral and written communications within the Department of Justice reflect concern by Attorneys General and the Director of the Federal Bureau of Investigation that the use of listening devices by agents of the government should be confined to a strictly limited category of situations. Under Departmental practice in effect for a period of years prior to 1963, and continuing into 1965, the Director of the Federal Bureau of Investigation was given authority to approve the installation of devices such as that in question for intelligence (and not evidentiary) purposes when required in the interest of internal security or national safety, including organized crime, kidnappings and matters wherein human life might be at stake. Acting on the basis of the aforementioned Departmental authorization, the Director approved installation of the device involved in the instant case.

Present Departmental practice, adopted in July 1965 in conformity with the policies declared by the

President on June 30, 1965, for the entire federal establishment, prohibits the use of such listening devices (as well as the interception of telephone and other wire communications) in all instances other than those involving the collection of intelligence affecting the national security. The specific authorization of the Attorney General must be obtained in each instance when this exception is invoked.

3. The information concerning petitioner obtained by the monitoring agents was submitted to their superiors in the Federal Bureau of Investigation in the form of the logs previously mentioned. Some of this information was then incorporated into two reports and two memoranda captioned "anti-racketeering" since these dealt with petitioner's possible affiliation with organized criminal activity in the United States.* The reports, dated April 17, 1963, and July 12, 1963, were transmitted by the Federal Bureau of Investigation to the Criminal Division of the Department of Justice, and the memoranda, dated April 5, 1963, and April 9, 1963, were sent to the Attorney General with copies to the Criminal Division. The date on which the April 1963 report was received by attorneys in the Organized Crime and Racketeering Section is not known, but it was transmitted to the Office of the Assistant Attorney General in charge of the Criminal Division, where it was received on November 6, 1963. The July 1963 report was received in the Organized Crime and Racketeering Section on August 2, 1963, and

*Recital of these facts is not intended to suggest that any wrongdoing on the part of petitioner was uncovered by the monitoring.

in the Office of the Assistant Attorney General in charge of the Criminal Division on October 28, 1963. The memoranda were received in the Office of the Attorney General on April 5 and April 9, 1963, respectively.

Neither the reports nor the memoranda were seen by attorneys of the Tax Division responsible for the prosecution of the tax evasion charges against petitioner until January 1964 when, in preparing for trial, they requested from the Criminal Division such material as the latter possessed concerning petitioner. The F.B.I. reports and memoranda were included in the material transmitted pursuant to this request. They were received and examined by the Tax Division attorneys some time between January 31, 1964, and April 15, 1964, when petitioner's trial began.

The bulk of the information contained in the reports had been obtained from sources other than the monitoring. Neither the reports nor the memoranda indicated that any portion of the information was derived from a listening device.

The Tax Division attorneys found nothing in the F.B.I. reports or memoranda which they considered relevant to the tax evasion case. No information from these reports or memoranda (whether obtained from the listening device or from any other source) was used by government counsel in petitioner's tax evasion trial. The charges against petitioner in this case were based upon his failure to include in his income tax returns for 1956 through 1959 certain specific items of income. The proof that petitioner had received these items in those tax years was ob-

tained not by the Federal Bureau of Investigation but by agents of the Internal Revenue Service in an investigation begun in the spring of 1960 and concluded late in 1962. On December 12, 1962, the Internal Revenue Service referred the case to the Tax Division of the Department of Justice for criminal prosecution. All evidence produced by the government at petitioner's trial was detailed in an accompanying report of the Internal Revenue Service. Neither additional evidence nor any lead to additional evidence was obtained from the F.B.I. reports and memoranda.

In connection with an inquiry on an unrelated matter, the F.B.I. informed the Attorney General and the Criminal Division in late August 1965 that a listening device had been installed in petitioner's hotel suite. The logs were then obtained and reviewed within the Criminal Division in connection with the unrelated matter. However, the fact that conversations between petitioner and counsel whom he had then retained had been overheard was not noted by any attorney in the Department of Justice until after April 21, 1966, when the logs were again examined, this time by attorneys in the Tax Division who were familiar with the history of petitioner's case. They completed their review in early May and brought this fact to the attention of the Attorney General. At his direction, the Solicitor General was advised on May 10, 1966, that a listening device had been in operation in petitioner's hotel suite and that such conversations

had been overheard, and our memorandum of May 24, 1966, was accordingly filed in this Court.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JULY 1966.

U.S. GOVERNMENT PRINTING OFFICE: 1966